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TABLE OF CONTENTS

LEADING ARTICLES

TRANSATLANTIC CHARTER POLICY—A STUDY IN AIRLINE REGULATION . . . . . *Jack M. Goldklang* 99

ESTIMATES AND ACTUALITY: COMPARATIVE COSTS OF BRITISH CROSS-CHANNEL AIRLINES 1918-24 . . . . . *Robin Higham* 137

SOME AVAILABLE TRAFFIC FORECASTS AND THE POTENTIAL DEMAND FOR COMMERCIAL SUPERSONIC AIRCRAFT . . *Roderick Heitmeyer* 153

INTERNATIONAL REVIEW

I. INTERNATIONAL CIVIL AVIATION ORGANIZATION 172

II. INTERNATIONAL AIR TRANSPORT ASSOCIATION 173

III. WORLD HEALTH ORGANIZATION 176

IV. INTERNATIONAL FEDERATION OF AIR TRAFFIC CONTROLLERS ASSOCIATION 177

V. INTERNATIONAL ASTRONAUTICAL FEDERATION 177

VI. INTERNATIONAL CRIMINAL POLICE ORGANIZATION 178

VII. CUSTOMS CO-OPERATION COUNCIL 178

CURRENT LEGISLATION AND DECISIONS 179

BIBLIOGRAPHY 185

TRANSATLANTIC CHARTER POLICY— A STUDY IN AIRLINE REGULATION

By Jack M. Goldklang†

I. Introduction

ANYONE with enough money can charter a bus, a train, or an ocean liner with few questions asked. Chartering an airplane stands in a class by itself. It can involve compliance with a very complex collection of government and private restrictions.

In recent years the charter aviation field has grown tremendously. Since 1957 charter traffic over the Atlantic has increased at the rate of fifty percent each year so that at the height of the 1960 season eleven percent of all transatlantic air traffic was carried on charter flights.[1] The reason for this increase is not difficult to understand. A round trip charter to Paris may save the chartering party fifty percent of the regular fare.[2] Not everyone is eligible for this great savings, however. As a result, part of the traveling public is able to obtain a transportation bargain while the majority must cope with expensive single-ticket fares.

How this situation evolved is not a simple story. It provides an interesting example of the meeting between private industry and government regulation. This article will attempt to tell that story, explain the charter rules today, and explore the future for this field. It will focus on the development of the transatlantic civilian passenger charter market, dealing with the ordinary case where a group hires a plane on a pro-rata share basis.[3] The first part of the article concentrates on placing charter development in an industry-wide setting. Many of the legal and administrative problems alluded to in this section are discussed in greater detail in the second part. It is hoped that this organization will make the history more readable and the law more comprehensible.

II. History of Charter Regulation

A. *Early Developments; 1945-1954*

The history of the Civil Aeronautics Board's policy in the transatlantic charter field is very complex. This complexity stems from the dynamic changes which have shaped the course of aviation history since the Second World War.

At the end of World War II a large number of surplus airplanes became available at low prices. The scheduled airlines were faced with growing

† Cornell University, A.B., 1958; Harvard University, LL.B., 1961.

[1] Transatlantic Charter Trips, Proposed Rule, 25 Fed. Reg. 10944, 10945 (1960).

[2] The economy class rate round trip New York to Paris is $525.60. Since complete domination of the scheduled airlines by jet transportation is at hand, the jet fare is given. Hudson, *Take-over by Jets*, N.Y. Times, Feb. 26, 1961, § 10, pt. 1, p. 3, col. 7. Charter fares by piston plane or turboprop cost about $260.

[3] This is meant to exclude the cargo issue and also "single-entity" charters where the entire price is paid by one party. See CAB Econ. Regs. Pt. 295, Subpt. B (1960).

pains and it became relatively easy for non-scheduled airlines with small amounts of capital to enter the arena.[4] These "non-skeds" were authorized to provide only "irregular, limited, and sporadic service." This included the right to carry passengers in foreign air transportation.[5] In theory these new carriers were not supposed to be in direct competition with certificated service. Nevertheless, the Board's rules were not strictly followed and competition with the scheduled lines did exist. After September 10, 1947 the irregular carriers were no longer permitted to engage in foreign air transportation. The Board announced that, in view of the expansion of the American certificated airlines and the award of permits to foreign air carriers, continued activity by the irregular carriers in the foreign field was no longer justified.[6] The scheduled American carriers and foreign flag lines had authority to carry charter trips as well as individually ticketed passengers.[7] However, they were chiefly occupied at this time with developing scheduled service on their regular routes.

The Board's action did not successfully halt all of the activity of the irregular carriers in the foreign field. There was resistance to the new restrictions. For example, on January 6, 1948 the CAB charged Transocean Airlines, an irregular carrier, with violation of the ban on foreign transportation of passengers.[8] Transocean and other carriers in a similar position argued that since they were operating charter flights they were not engaged in common carriage and therefore were not subject to the Board's jurisdiction.[9] Despite the order, in the summer of 1948 Transocean carried eight round trip student charters to Europe.[10] The CAB staff was forced to spend a lot of time establishing the necessary jurisdictional facts in the cases of Transocean and other irregular carriers.[11] On June 5, 1950 the Board held that Transocean had been violating the Aviation Act by engaging in its transatlantic charter activities. It said that even if all of Transocean's flights were limited to planeload lots, carrying bona fide charter groups, it would still be engaged in common carriage. Because the airline indiscriminately carried all charter groups it could not be a private carrier for hire.[12]

In the meantime other developments had made it possible for the non-certificated carriers to engage in foreign transportation on a limited basis without defying the Board's orders. In May 1949 the Board indicated that it would grant a limited number of exemptions to irregular carriers to

[4] *Large Irregular Air Carrier Investigation*, 22 C.A.B. 838, Initial decision of the Trial Examiner at 891 (1955).

[5] *Ibid;* CAB Econ. Regs., § 292.1, 14 C.F.R. § 291 (1949).

[6] *Ibid;* CAB Econ. Regs. § 291.23, as amended June 10, 1947, *Transocean A.L., Enforcement Proceeding*, 11 C.A.B. 350, 358 (1950); American Soc'y of Travel Agents, *Comments on Re-examination of Exemption Policy and Proposed Transatlantic Air Policy for 1951*, Nov. 22, 1950 (mim).

[7] The Civil Aeronautics Act § 401, 52 Stat. 987, 49 U.S.C. 481, provided that U.S. certificated carriers "may conduct charter trips without regard to the points named in its certificate, under regulations prescribed by the Board."

Foreign carriers were given authority in their permits to engage in air transportation, which included charters, between points named in their certificates. *Foreign Off-Route Charter Service Investigation*, Order No. E-12945, Sept. 8, 1958, p. 2.

[8] Order No. E-1105.

[9] Section 401 of the present Act prohibits a carrier from engaging in "air transportation" without a certificate. Sections 101(10) and 101(21) limit the certification requirement to situations where the airline acts as a common carrier; *Investigation of Seaboard & Western Airlines, Inc.*, 11 C.A.B. 372, 378 (1950).

[10] *Transocean A.L., Enforcement Proceeding*, 11 C.A.B. 350 (1950).

[11] 1949 Ann. Rep. of the CAB 19.

[12] *Transocean A.L., Enforcement Proceeding*, 11 C.A.B. 350 (1950).

conduct transatlantic charter flights.[13] Special exemptions were given to two irregular carriers permitting them to operate five round trips carrying students to Rome and Tel Aviv.[14] In support of the exemptions the Board mentioned that there would be little effect on the certificated carriers since their facilities were inadequate to handle the transatlantic traffic available at the height of the tourist season. The Board indicated that it would consider requests for exemptions as long as they were for charter trips by "recognized educational, religious and charitable groups." It turned down a request by Flying Tiger Line for a blanket exemption to fly charters and pointed out that it did not plan to make any general change in the restrictions it had placed on the non-certificated carriers.[15]

Other irregular and cargo carriers took advantage of the Board's announcement and a number of additional exemptions were issued for the summer of 1949. One of the carriers was Transocean which got permission to conduct 44 transatlantic flights. The carrier was very careful to stipulate that by accepting the exemptions it was not conceding its dispute then pending with the Board over the latter's jurisdiction.[16] Another carrier got permission for seventy one-way charter flights under similar circumstances.[17]

In all, it has been estimated that 2,500 students flew to Europe at bargain charter rates during the summer of 1949 at an average of $350 per round trip.[18] At that time the only available service on scheduled air lines was first class. The cost of a round trip from New York to London was $630.[19]

The Board advised the scheduled American carriers that it not only opposed introducing a less expensive form of scheduled transportation than the prevailing first class service but that it would favor an increase of seven per cent, raising the New York to London one-way fare, for example, from $350 to $375.[20] This advice was based on the theory that it was not possible to have enough difference in service to distinguish between first class and other service. It was thought that the resulting diversion from first class would ultimately come out of the taxpayer's pocket in the form of additional subsidy for the scheduled carriers.[21]

Despite these developments the Board decided to continue its charter exemption experiment. In December 1949 it undertook to describe in more detail just what its policy would be. At this point basic differences among Board members on the problems of low cost travel came into the open.[22]

The announcement of December 1949 invited carriers without trans-

[13] CAB Press Release 49-36, May 13, 1949.
[14] Orders E-2817, E-2818, May 14, 1949.
[15] CAB Press Release 49-36, May 13, 1949.
[16] Order E-2905, June 3, 1949.
[17] *Seaboard & Western Airlines*, Order No. E-2906, June 3, 1949.
[18] American Soc'y of Travel Agents (ASTA), *Comments on Re-examination of Exemption Policy* 25, Nov. 22, 1950 (mim).
[19] "Monopoly Problems in Regulated Industries," *Hearings Before the Antitrust Subcommittee of the Committee on the Judiciary*, H. of R., 84th Cong., 2nd sess., pt. 1, Airlines, at 1032 (1956).
[20] As matters developed the rate conference of the International Air Transport Association (IATA) did not approve the general increase and it did not go into effect. *Policy Statement on Transatlantic Air Travel for 1950*, issued with CAB Press Release 49-99, Dec. 6, 1949.
[21] Letter from CAB to Presidents of U.S. Int'l Carriers November 3, 1949, released with CAB Press Release 49-99, Dec. 6, 1949; Letter from CAB to Presidents of U.S. International Carriers, April 27, 1949.
[22] CAB Press Release 49-99, Dec. 6, 1949, issued with *Policy Statement on Transatlantic Air Travel for 1950*.

atlantic routes to seek permission to carry charter groups during the 1950 tourist season. The Board expressed confidence that the scheduled carriers could handle off-season traffic without help. Since the certificated lines were being subsidized, the Board made it clear that if they were to conduct charter flights on their own routes the Board would not allow diversions from more expensive service to increase subsidies.

The Board's policy had the marks of improvisation. Some members felt that exceptional circumstances existed and that it was therefore best not to commit any solution to a permanent set of regulations. The CAB noted that abnormal travel pressures had built up because of war time restrictions, the coming of Catholic Holy Year and devaluations of foreign currency. The public interest aspects of granting the exemptions were stressed. It was said that foreign policy would be aided by contacts between American tourists and Europeans and by the dollar flow that tourism would generate.[23] Furthermore, the Department of State, the Department of Commerce and the Economic Cooperation Administration stressed the importance of travel in helping international understanding.[24]

The standard for exemptions, as announced, was both vague and restrictive. Chartering groups were limited, as in the previous year, to bona fide religious, educational and charitable groups.[25] The trip had to be "in furtherance of a common objective" and this objective had to be clear cut.[26] Applications had to be submitted well before the summer season and firm contracts must have been made with the carriers at the time of application.[27]

In a strong minority comment Member Harold A. Jones challenged the economy, legality and public interest of the new policy. If the Board had thought that a special low fare was in the public interest in 1950, he argued, it should have faced the issue directly and supported a low fare by the scheduled airlines. If the diversion argument was correct, then the charter policy must be uneconomical. Off-season excursion rates which had been encouraged were not going to be used when people might travel even more cheaply during the height of the season. The vague standards which were adopted risked opening the floodgates. At the same time those carriers not eligible would not be getting equal treatment from the government. Exemptions, he said, should not be used to get around the principle of route security intended by Congress.[28]

Administrative difficulties soon materialized. The exemptions which had been issued during 1949 led people to think that an easier situation would exist in 1950. Travel agents and organizations advertized charter flights before seeking permission for such flights. Business was solicited from individuals, especiallly in the student and teacher market, even though the policy statement indicated that the Board planned to grant exemptions only to bona fide groups.[29]

In May 1950 special exemptions were given to three carriers, making it possible for them to carry a total of eighty flights. The orders emphasized

[23] *Ibid.*

[24] CAB *Statement of action on applications for permission to carry groups on special transatlantic charter trips*, May 20, 1950; issued with CAB Press Release 50-28.

[25] CAB Press Release, *supra* note 22.

[26] CAB *Statement*, *supra* note 24.

[27] CAB Press Release, *supra* note 22.

[28] CAB *Policy Statement*, *supra* note 22.

[29] CAB Press Release 50-28, May 20, 1950.

safety records and previous experience with four engine aircraft in transatlantic operations as the important factors in selection. The carriers receiving exemptions were Flying Tiger, Seaboard & Western and Transocean Airlines.[30] There were seven orders denying exemptions. Most of them mentioned the fact that the burden of proof had not been met as to the bona fides of the group applying for charter, but it appeared at the same time that safety was the Board's primary concern.[31]

The Board announced that groups contracting with airlines which had been denied exemptions would now be able to make arrangements with those which had received approval.[32] A representative of one of the carriers which was denied an exemption said that his company paid the fares of eight hundred students at a loss so that they could travel to Montreal and then cross the Atlantic on a Canadian airline.[33]

Member Jones who had originally objected to the Board's policy did not participate in the May decisions. On this occasion a strong minority statement was issued by Member Josh Lee. He objected to granting exemptions to carriers which had long violation records and which even then were the subjects of enforcement proceedings.[34] In the case of Transocean, for example, the very experience which was made the basis of the exemptions had been gained in defiance of the Board's orders. The Board, caught between policies of wanting maximum experience and not wanting to reward those who had flaunted its jurisdiction, decided in favor of experience.

Lee recognized the difficult problem which confronted the Board in determining what constituted a bona fide charter group. He was in favor of doing away with this standard altogether and limiting charter flights to those groups which had purchased package tours including all the necessary arrangements. This, he argued, would simplify administration and still protect the certificated carriers by allowing them to carry these groups.[35]

Another important problem confronting the Board was the regulation of indirect carriers in the charter field. These organizations contracted with the carriers for the operation of flights, issued their own tickets and assigned people to flights without any responsibility on the carrier's part. Because the certification requirement refers to anyone who engages either "directly or indirectly" in air transportation it was necessary for these groups to receive exemptions of their own.[36] The bona fide group concept was supposed to apply to groups that reserved seats through the indirect carriers; but it appears that the standard broke down completely in cases in which these carriers were involved. An indirect carrier called Youth Argosy, which had been active in previous summers, asked for permission to operate eighty flights. After hearing the details the Board decided that forty flights would be enough to carry the groups which met the Board's standards.[37] Special permission was given, however, to fill these planes with individuals if there were any space remaining.[38]

[30] Orders E-4190, E-4191, E-4192, E-4201, May 19, 1950.
[31] Orders E-4193 through E-4200, May 19, 1950.
[32] CAB *Statement, supra* note 24.
[33] ASTA *Comments, supra* note 18, at 30.
[34] CAB *Statement, supra* note 24.
[35] CAB *Statement, supra* note 24.
[36] Federal Aviation Act of 1958, § 101(3).
[37] Order No. E-4190, May 19, 1950.
[38] CAB Press Release 50-28, May 20, 1950.

Under the exemptions granted in 1950 more than half of the 2,633 passengers which Youth Argosy carried were individuals. Furthermore a list of the "groups" which were carried shows that the announced standards were all but ignored. Ten of the groups listed had only one member.[39] Most of them had less than ten members and many of these did not travel as a group on the same flight.[40] Some of the "group" names were merely names of travel agencies.[41] The organization's solicitation material made no reference to the group requirement although it did state that those participating in the flights should have "educational, religious, or charitable motivation."[42] The difficulties involved in this sort of test are self-evident.

Five years later a member of the Board was to refer to the summer of 1950 as "a period of unfortunate experience."[43] A description of events as they occurred certainly bears this out.

The activities by indirect carriers created situations in which passengers were left stranded, sometimes in cases of real hardship. One agency left one hundred eighty tourists in Paris saying that there simply was not enough money left to pay for return flights.[44] Eventually these passengers had to sign a note for 165 dollars payable to the airline, but collectable only if the travel service defaulted completely.[45] A student group ran out of money and slept on the floor of the student travel agency in Paris until informed that the agency had gone broke.[46] In Luxembourg, when planes were delayed, an appeal was sent out through the newspapers asking people to take members of Youth Argosy into their homes. Perle Mesta, the United States Minister in Luxembourg opened a free lunch counter for 300 stranded students at the U.S. legation.[47] Responsibility seemed to lie with the defaulting travel services rather than with the airlines. Incidents like these gave rise to the later adoption of provisions requiring the chartering group to post bonds or advance payment and eliminating indirect carriers from the charter field.

Under the 1950 program exemptions had been allowed for a total of 105 round trip flights between the United States and Europe. Three irregular carriers and one domestic certified carrier were ultimately involved in these operations.[48] About 5,000 students were carried on these flights at prices well below first class fares.

As a result of its 1950 experience the Board instituted a *Re-examination of Exemption Policy* consisting of informal conferences and presentation of evidence beginning late in September 1950.[49] The facts developed above were brought out at these conferences. It was suggested that the Board must either "open the door" or be prepared to deal with all manner of subterfuge and special "deals."[50] It was also argued that circumstances

[39] ASTA *Comments, supra* note 18, append. 1.
[40] *Id.* at 12.
[41] ASTA *Comments, supra* note 18, append. 1.
[42] Letter from Monroe Smith, President, Youth Argosy to potential members, Oct. 5, 1950, included in ASTA *Comments, supra* note 18, append. 3.
[43] *1955 Transatlantic Charter Policy*, 20 C.A.B. 782, 786 (1955).
[44] ASTA *Comments, supra* note 18, at 6.
[45] *Id.* at 7.
[46] *Ibid.*
[47] ASTA *Comments, supra* note 18, at 9.
[48] 1950 Ann. Rep. of the CAB 25.
[49] ASTA *Comments, supra* note 18, at 1, 9.
[50] *Id.* at 31.

in transatlantic air travel had changed sufficiently so that it would then be practical to have two distinct classes of service. The scheduled airlines had begun to advertise luxurious meals, free wines and liquors, and more comfortable seating arrangements. Domestic coach service had been in existence since September 1949. It seemed that there might now be room for two distinct classes of international service, eliminating the charter problem. Slower planes such as the DC-4 with closer seating arrangements might be used for a tourist class as newer aircraft were coming into use.[51]

Part of the Board's plan was to regulate charter conditions for certificated carriers.[52] Pan American Airlines requested that the Board permit relative freedom with regard to charters by the certificated airlines, saying that the protection given by certificate was not meant to apply to charter competition by other certificated carriers. It was suggsted that travel bureaus be permitted to organize groups for charters.[53]

The Board still had relatively limited knowledge of the problems involved in charter activity. Many ideas were suggested by the rules which the airlines had adopted privately through resolutions of the International Air Transport Association (IATA).[54]

IATA, representing the scheduled airlines had been wrestling with the charter problem for a number of years. In June 1947 there was a proposal to admit charter operators to IATA if they were of sound financial standing.[55] Charter competition had made IATA consider introducing a more austere type of service as early as 1948.[56] However, the members of the organization decided not to admit charter operators and to guard against chartering as a medium of price cutting within their own organization. IATA recommended that members stop servicing and other operational agreements with non-scheduled airlines.[57] A campaign was started, asking governments to crack down on the international operations of the non-skeds.[58] IATA also moved to curb the practice of chartering planes to travel agents who proceeded to retail seats on a basis which under cut the fare schedule that IATA works to maintain.[59]

An IATA proposal of December 1948 recommended that charter contracts stipulate that space would not be resold at less than IATA fares. Exceptions were made only for government organizations that were aiding immigrants and displaced persons.[60] This original charter resolution soon proved inadequate.[61] IATA carriers were prevented from meeting outside competition.[62] Before the CAB issued its new regulation in May 1951 the IATA legal committee had been working with a "common interest" test for charter groups.[63] It was very difficult to draft a resolution without loopholes that would cover all the cases of "common inter-

[51] *Id.* at 27, 28.
[52] Draft release No. 42, Docket DR-42.
[53] *ACTA-IMATA Commercial Charter Investigation*, 22 C.A.B. 760, 803 (1955).
[54] Letter from Chief of CAB Office of Information, N.Y. Times, Aug. 9, 1959, § 2, p. 21, col. 2.
[55] 5 IATA Bull. 12 (June 1947).
[56] 8 IATA Bull. 26 (Dec. 1948).
[57] *Id.* at 69.
[58] 8 IATA Bull. 69 (Dec. 1948); see also *Hearings before the Antitrust Subcommittee, supra* note 19, at 1123.
[59] 8 IATA Bull. 69 (Dec. 1948).
[60] *Id.* at 70.
[61] 14 IATA Bull. 83 (Dec. 1951).
[62] 21 IATA Bull. 95 (1955).
[63] 14 IATA Bull. 68 (Dec. 1951).

est" which might justify a group charter. There was the danger that a narrowly drafted resolution might require members to determine the state of mind of the chartering group and become more of a hindrance than a help in future business.[64]

On March 22, 1951 the CAB severely limited the authority of the non-skeds in the domestic airline industry.[65] Two weeks later a new Board policy statement spelled their end in the international field.[66] At the same time a regulation was issued defining charter rules for certificated American carriers.[67]

The Board examined the results of the 1950 season and concluded that all of the passengers handled by the supplemental carriers could have been carried by the certificated lines with only a slight revision in schedules. Therefore no further charter exemptions were to be granted unless there was an affirmative showing that the authorized carriers were unable to provide "reasonably adequate service."[68]

The standard of "reasonably adequate service" was to be judged by charter rates established by the scheduled airlines.[69] The Board requested that IATA adopt a resolution fixing minimum rates for charter flights above what had been the free market rate.[70] This was not done and charter prices remained uncontrolled.

The scheduled airlines were told to make arrangements to rent extra airplanes for the peak season so that it would not be necessary for others to share in the transatlantic market.[71] In accordance with this policy, Pan American, for example, rented planes from National Airlines which had a seasonal decline during the summer.[72] The Board said that it would not grant further exemptions to indirect carriers. However, it would encourage low fares for individuals on regular transatlantic flights.[73] In the spring of 1951 the Board asked that a tourist service be started on the North Atlantic routes in time for the 1952 season. An agreement was reached which set fares at substantially those recommended by the Board.[74] Meanwhile the IATA-regulated round trip fare from New York to London reached $675 in 1951. It had been $630 in 1949.[75]

The new policy effectively cut the irregular carriers out of the commercial charter market. As a rule exemptions were given only to carry military personnel and refugee groups across the Atlantic.[76] The new domestic and international restrictions left only the military situation to keep the irregular carriers alive.[77] An investigation was launched which

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[64] *Ibid.*

[65] CAB Econ. Regs. § 291.27, 16 Fed. Reg. 2216 (1951).

[66] CAB Press Release 51-28, March 22, issued with CAB *Policy Statement on Transatlantic Charters*, March 16, 1951, 2 Av. L. Rep. para. 23110 (1951).

[67] 14 C.F.R. § 207 (1951).

[68] CAB *Policy Statement*, *supra* note 66.

[69] *Ibid.*

[70] American Aviation, March 19, 1951, p. 2.

[71] CAB *Policy Statement*, *supra* note 66.

[72] *ACTA-IMATA Commercial Charter Investigation*, 22 C.A.B. 760, 800 (1955).

[73] CAB *Policy Statement*, *supra* note 66.

[74] 1951 CAB Ann. Rep. 35.

[75] *Hearings before the Antitrust Subcommittee*, *supra* note 19, at 1032.

[76] See, *e.g.*, CAB *Weekly Summary of Orders and Regulations* Nos. 272-300 (1951).

[77] Henzey, *Defense Role for Non-skeds under New CAB Policy*, American Aviation, March 19, 1951, p. 41.

was ultimately to determine the place of the irregular carriers in the aviation industry.[78]

During the first summer of the new policy the Board retreated slightly. Youth Argosy received permission to arrange thirteen flights for those who had relied on the old policy. It was permitted to fill these flights with later applicants, if necessary. The Board stressed the fact that this was done out of consideration for the passengers and not for Youth Argosy.[79] The Flying Tiger Line was given an exemption to conduct operations for Argosy[80] and also received exemptions for several other student trips.[81] This, however, was all the transatlantic charter activity permitted the non-skeds during the summer of 1951.

Meanwhile the total number of charter passengers carried across the Atlantic by scheduled IATA carriers doubled. Nearly 12,000 charter passengers were carried in 1951 compared to 5,600 in 1950.[82]

An attempt was made to break the barrier of the 1951 Policy Statement by finding a loophole in the Civil Aviation Act. Flying Tiger, a certificated cargo carrier, argued that the provision that charter trips might be made "without regard to the points named in its certificate" gave it the right to conduct passenger charters if it wanted to do so. The Board held that the words "charter trips" refer to the conditions under which the carriage is performed and not to the type of traffic which is carried. Since Flying Tiger was a cargo carrier, it was limited to carrying cargo charters under its certificate. It could not use this argument to re-enter the market closed by the Board's policy statement.[83]

From 1951 to 1955, the new Part 207 of the CAB Economic Regulations provided the framework for charter activities. It was meant to limit charter flights so that they could not be used as a device to undermine regular fares and eventually cost the American public more money in subsidy.[84] In taking steps to regulate U.S. carriers the CAB suggested that if foreign carriers were not similarly limited the CAB would re-examine its own policy.[85] After all, the CAB had ended "wasteful competitive practices."[86] Now it was expected that foreign carriers would tighten up their own regulations. The CAB had the potential power to regulate directly the foreign charters entering the United States; however, it was not until 1958 that the Board was to issue a regulation in this field.[87]

The provisions of Part 207 were comparatively simple. The new regulation focused on limiting methods by which charter groups could be solicited. The activities of travel agents were severely curtailed. No charter flight could be organized by a person whose business was the sale of transportation services.[88] The profit was thereby taken out of organizing charters. No arrangement was valid where the total amount paid by the

[78] *Large Irregular Air Carrier Investigation*, Docket No. 5132.
[79] Order No. E-5359, March 23, 1951; Order No. E-5390.
[80] Order No. E-5420.
[81] University of Cal., Order No. E-5435; World Assembly of Youth, Order No. E-5627.
[82] IATA *World Air Transport Statistics* 40 (1960).
[83] Federal Aviation Act of 1958, § 401(e); *Charter Flight Tariff Investigation*, 15 C.A.B. 921 (1952).
[84] 14 C.F.R. § 207 (1951).
[85] CAB Press Release 21-58, March 22, 1951.
[86] *Preface*, 14 C.F.R. § 207 (1951).
[87] See text, *infra* p. ——.
[88] 14 C.F.R. § 207.1(a)(2) (1951).

passengers was more than the carrier's published rate.[89] There was to be no soliciting of individuals from the general public.[90] The point at which a solicited group was deemed to be equal to the general public was a difficult decision to make under the regulation.

By regulating the solicitation process rather than describing the nature of eligible charter groups the Board evidently hoped to avoid the possibility of unjust discrimination in the rules.[91]

After the 1949-50 period, when it had used the "religious, educational, and charitable" test, the Board decided the *Free and Reduced Rate Transportation Case*.[92] It held that a reduced rate must be available to all who apply and must not be related to the "mission, business, or status" of the passenger. A tariff based on "community of interest and purpose" of the traveling group was held to be unjustly discriminatory.

This decision has not prevented the Board from looking at the "purpose and objectives" of the group as evidence of whether there has been actual solicitation of the public.[93] It has meant that a previously unaffiliated group, able to meet the Board's standards, has occasionally been permitted to charter an airplane.[94] However, the importance of the rule allowing "spontaneous" charters has been largely academic. In one case, a scheduled TWA flight had mechanical trouble just before take-off and the passengers were able to charter an airplane from a competitor at a lower rate.[95] By barring the activities of agents and promoters the Board has left very little opportunity for forming charter groups unless the group has had a "prior affinity."[96]

There was no limit to the number of charters that a scheduled carrier might conduct as long as they were flown on its certificated route.[97] Except for filing a tariff no prior authorization was necessary.[98]

Off-route charters were limited by a formula based on the previous year's scheduled mileage.[99] In practice the scheduled carriers fly such a large number of scheduled miles that this limit has never restricted their activities in this area.[100] Before conducting an off-route charter flight it was necessary to get permission from the other carriers serving that route or to go to the Board for a finding of public interest.[1] The other carriers might contest this finding, showing that they were equipped to handle the traffic themselves.[2] Part 207 still exists in its original form.[3]

The Board was content to let regulation of foreign carriers remain the primary responsibility of IATA whose members were bound by Charter

[89] 14 C.F.R. § 207.1(a)(4) (1951).
[90] *Ibid.*
[91] Federal Aviation Act of 1958, § 404(b), 72 Stat. 760, 49 U.S.C. 1374; *Foreign Off-route Charter Service Investigation*, Order No. E-12945, Sept. 8, 1958, Examiner's Recommended Decision 16.
[92] 14 C.A.B. 481 (1951).
[93] *Pan American World Airways, Re Rate and Traffic Matters*, 18 C.A.B. 648 (1954).
[94] 14 C.F.R. § 207.1(a)(3) (1951).
[95] Examiner's Recommended Decision, *supra* note 91, at 15 n. 26.
[96] *Id.* at 15; No Boston airline office could remember ever dealing with a "spontaneous group" charter.
[97] 14 C.F.R. § 207.5 (1951).
[98] 14 C.F.R. § 207.4 (1951).
[99] 14 C.F.R. § 207.5 (1951).
[100] *Foreign Off-Route Charter Service Investigation*, Order No. E-12945, Sept. 8, 1958, p. 18.
[1] 14 C.F.R. sec. 207.8 (1956).
[2] 14 C.F.R. sec. 302.600 (1956).
[3] Proposals for change have not been implemented, 1959 CAB Ann. Rep. 30.

Resolution 045. It held, however, that the two U.S. transatlantic carriers, TWA and Pan American, remained bound by the terms of Part 207, conditioning its approval of Resolution 045 to that effect.[4] Basically the IATA resolution then in effect resembled Part 207. However, the Board wanted IATA to abandon its strict "prior affinity" test because of the discrimination issue mentioned before. For a number of years IATA did not comply with this request.[5]

In 1952 the Board issued a policy statement reaffirming the previous year's stand and mentioning the fact that the new transatlantic tourist fares would minimize any need for special charter relief.[6] The new fares went into effect in May 1952 and soon proved popular. The tourist fare for a round trip from New York to London was $486; first class service had risen to $711.[7] The number of charter passengers carried by the scheduled lines continued to grow. In 1952 IATA members carried 15,684 charter passengers across the North Atlantic. The following year, when tourist fares were fully implemented, scheduled totals in tourist class rose from 188,701 in 1952 to 320,529; however, the number of charter passengers remained about the same as in 1952.[8] In 1954 charter totals had risen to 30,858 while all scheduled North Atlantic passengers totaled 550,000.[9] There was an indication that at the peak of the summer season none of the Atlantic carriers were able to satisfy the demand for any type of accommodation including charters.[10] The non-skeds had ceased, of course, to be important in the transatlantic commercial charter field. No decision had yet been announced in the *Large Irregular Air Carrier Investigation* which had started in 1951.

B. *The Charter Market Grows, 1955-1962*

In May 1955 the Board made an important change in charter policy. After hearing oral argument, it announced a plan to grant exemptions to supplemental and cargo carriers.[11] It carefully limited the announcement to the summer of 1955, saying that continuation of the policy depended on the disposition of the *Large Irregular Air Carrier Investigation*.[12] The new policy made it possible for the non-skeds to compete once again in the transatlantic market. Where the passengers shared costs on a pro-rata basis, the scheduled carriers still had a right of first refusal on their own routes. However, the Board was now willing to consider rate differences in deciding whether to grant an exemption to an irregular carrier. The general definitions adopted in Part 207 were applied to the irregular carriers. The "essential to the success of the movement" test was abandoned. A number of points not explained in Part 207 were made more explicit. Agents were permitted to represent the airlines as long as their commission did not exceed five percent.[13] It was thought that by keeping commissions low there would be little incentive for agents to form bogus charter groups. It was still not clear, however, whether an agent could represent a bona

[4] *Pan American, supra* note 93, at 650; See text, *infra* page ——.
[5] Order No. E-12228, March 7, 1958.
[6] 2 Av. L. Rep. para. 23133 (1952).
[7] *Hearings before the Antitrust Subcommittee, supra* note 19, at 1032.
[8] IATA, *World Air Transport Statistics* 40, 41 (1960).
[9] *Id.* at 41.
[10] *ACTA-IMATA Commercial Charter Investigation*, 22 C.A.B. 760, 800 (1955).
[11] *The 1955 Transatlantic Charter Policy*, 20 C.A.B. 782 (1955).
[12] Docket No. 5132.
[13] *The 1955 Transatlantic Charter Policy*, 20 C.A.B. 782 (1955).

fide group if no individual solicitation had taken place.[14] Advertising by the carriers was severely limited. Any advertising of individual pro-rated charter shares was to be considered solicitation of individuals and would be grounds for denying an exemption. To preserve the distinction between individual fares and charter service, a group that chartered more than one round-trip flight was not allowed to mingle passengers from different flights on return trips.[15]

A number of procedural innovations were made in 1955. To avoid stranding incidents, carriers were instructed to require full payment or bond ahead of time. An informal method of conference with the director of the Bureau of Air Operations was devised so that groups would not go through the exemption procedure and learn at the last minute that they were ineligible from the start. A list of expenses incurred in organizing the charter had to be given to the passengers so that there would be no hidden profit. The total amount of expenses incurred in organizing the charter was considered in granting the exemption.[16]

A dissent from the *Policy* was issued by Member Chan Guerney. He cited the unfortunate experiences that had resulted from the pre-1951 approach and expressed the opinion that legitimate charters could still be handled by the scheduled carriers.

However, the scheduled carriers' own testimony showed that there was not a carrier on the Atlantic that could satisfy the demand at the peak of the season, including the demand for charter service.[17] Nonetheless, they fought the further entry of the irregular carriers in the foreign field. Pan American warned that more American competition would hurt foreign relations.[18] Pan American was still heavily subsidized and TWA only recently had stopped receiving help.[19] In the year ending March 31, 1955 federal subsidy to all the international carriers amounted to $25,210,000.[20] The financial success of the scheduled airlines in the charter business was still uncertain. After several years of active participation in the field, Pan American had made no study to see if its charter operations were profitable on an allocated cost basis or otherwise.[21] It is doubtful, therefore, whether the Board could have made good its threat of December 1949 to disallow diversion losses incurred by the scheduled carriers own charter operations in computing subsidy.

With the institution of a more liberal policy for irregular carriers, the Board ordered an investigation into problems connected with activities of foreign carriers in the charter field.[22] There was to be no decision resulting from this new inquiry for three years.[23]

The decision in the *Large Irregular Air Carrier Investigation* was announced later in the year.[24] It was directed toward a policy of survival

[14] *Foreign Off-route Charter Service Investigation*, Order No. E-12945, September 8, 1958, Examiner's Recommended Decision, p. 13.
[15] *1955 Policy, supra* note 13.
[16] *Ibid.*
[17] *ACTA-IMATA Commercial Charter Investigation*, 22 C.A.B. 760, 800 (1955).
[18] *Ibid.*
[19] *ACTA-IMATA Commercial Charter Investigation*, 22 C.A.B. 760, 803 (1955).
[20] *Large Irregular Air Carrier Investigation*, 22 C.A.B. 838, 868 (1955).
[21] *ACTA-IMATA Commercial Charter Investigation*, 22 C.A.B. 760, 800 (1955).
[22] *Foreign Charter Service Investigation*, Order No. E-9127, May 19, 1955, Docket No. 7173, later *sub nom., Foreign Off-route Charter Service Investigation*, Notice to all parties, Jan. 30, 1956.
[23] Order No. E-12945, Sept. 8, 1958.
[24] 22 C.A.B. 838 (1955).

and growth for the non-skeds. The Board praised the role of the irregular carriers as innovators, especially as to coach service and charters. Dr. Charles Cherington, Dean of the Graduate School of Public Administration at Harvard, had testified that the irregular carriers would be good for testing and developing new markets, one of which was the foreign charter field.[25] It was recognized that in the domestic field the scheduled carriers had done little to develop the charter market. Therefore the irregular carriers were given an exemption to fly an unlimited number of domestic charter flights.[26] However, the Board refused to go beyond the *Transatlantic Charter Policy of 1955*[27] so far as international charters were concerned.

Since the scheduled carriers had already absorbed a great deal of subsidy the Board concluded that individually ticketed operations across the Atlantic by the non-skeds should not be permitted.[28] Having reached this conclusion, the Board was afraid that a grant of blanket authority to fly charters would encourage spurious charter flights as a way of getting around the single ticket restriction.[29] The same problem did not exist in the domestic field since the irregulars were permitted to conduct a certain amount of individually ticketed service anyway. The Board also reasoned that transatlantic passengers tend to stay at their destinations for longer periods of time than domestic passengers. They thought that this would build up pressure for the carriers to find back-hauls which would lead them to circumvent the rules.[30]

In 1955 the Board also had occasion to pass on a proposal made by a number of non-scheduled airlines to allow their Air Charter Exchange to solicit commercial charter business.[31] Since 1951 the exchange had been aiding military operations with a central communications and control board in Washington.[32] This enabled the combined fleet to provide quicker service and cut down on ferry mileage.[33] The Board permitted the exchange to extend its activity to the domestic commercial market but cited the need for a backlog of experience before extending this authority abroad.[34] Approval of the plan would not have eliminated the need for individual exemptions. The limitation to domestic commercial charters was something of a handicap. Since the same planes might be flying military and commercial missions on consecutive flights it was more difficult to coordinate the two kinds of traffic.[35]

Developments in 1955 and 1956 showed the difficulty which the CAB faced in achieving a lower transatlantic fare structure. In 1955 the Board approved the IATA fare proposals but warned that the general level over the North Atlantic was too high and urged a reduction.[36] IATA proceeded to raise first class fares ten percent although it made no change

[25] *Id.* at 911.
[26] *Id.* at 866.
[27] 20 C.A.B. 782 (1955).
[28] *Large Irregular Air Carrier Investigation,* 22 C.A.B. 838, 940 (1955).
[29] *Id.* at 865.
[30] *Ibid.*
[31] *ACTA-IMATA Commercial Charter Investigation,* 22 C.A.B. 760 (1955).
[32] Clayton Burwell, Pres., Independent Airlines Ass'n, *Lecture on Supplemental Air Carrier Service* at American Univ. School of Bus. Admin., Nov. 11, 1960, p. 14 (mim.).
[33] *Id.* at 16.
[34] *ACTA-IMATA Commercial Charter Investigation,* 22 C.A.B. 760, 768 (1955).
[35] Burwell, *supra* note 32, at 15.
[36] *IATA Traffic Conference Meeting,* Order No. E-9161, March 21, 1955.

in tourist rates. In February 1956 the Board refused to approve the IATA fares, saying that it thought that the relatively high load factor on the North Atlantic did not justify an increase.[37] It approved the tourist rates although it thought them high. Pressure from IATA lead the Board to reverse itself. It approved the IATA fares before the start of the 1956 season.[38] Later that year a compromise was reached which was suitable to the CAB. IATA agreed to put new low fares into effect beginning April 1958, not as soon as the CAB had wanted but closer to what it had asked for.[39]

The *1955 Transatlantic Charter Policy*[40] marked the start of a period of continuous growth in charter operations. Much of this business went to the supplemental carriers although the scheduled carriers also showed a steady annual increase.[41] By 1957 the Flying Tiger Line had become the largest charter operator in any class.[42] In that year it carried 15,000 commercial charter passengers and had revenues from this source alone of 5½ million dollars. Most of this business was from clubs and college groups.[43] Pan American and KLM ranked first and second among the scheduled operators. TWA, further down the North Atlantic charter list had charter revenues of 1,326,000 dollars in 1957.[44] The total IATA North Atlantic charter figure went above 50,000 in 1957 from 39,500 in 1955. However, scheduled traffic had grown faster than charter traffic among the IATA carriers.[45] During the peak season from April 1 to September 30, charters accounted for 6½ percent of all North Atlantic traffic.[46] This percentage was to grow in future years.

The CAB continued to refine the standards by which it would allow forming of charter groups. It issued no new regulation in 1956 but decided one case which limited the size of eligible organizations. The National Education Association advertised charter flights among its members through its own academic and professional journals and faculty notice boards. This ordinarily would not have been considered "public solicitation." However, the group was denied a charter because it had a total membership of 600,000 members which was held to be so large as not to be sufficiently distinguishable from the general public.[47]

In 1957 the Board issued a new policy statement making many of the criteria more specific,[48] based upon experience in administering the *1955 Policy*. The new statement showed the influence of IATA Charter Resolution 045. The Board stated that there had been numerous occasions where airlines had not complied with the Board's policy. The Board warned that it was going to require stricter compliance and that it had decided to incorporate the various parts of the policy as express conditions of the exemption order. Violations were to be turned over to the Office of Com-

[37] *IATA Traffic Conference Resolutions*, Order No. E-9969, Oct. 8, 1955.
[38] Order No. E-10017, Feb. 20, 1956.
[39] *IATA Traffic Conference Meeting*, Order No. E-10530, May 29, 1956.
[40] 20 C.A.B. 782 (1955).
[41] IATA, *World Air Transport Statistics* 39 (1960).
[42] Garrison, *Transatlantic Charter Growth Foreseen*, Aviation Week, June 2, 1958, p .28.
[43] *Ibid.*
[44] *Ibid.*
[45] IATA, *supra* note 41, at 39.
[46] Proposed Rule, 25 Fed. Reg. 10944, 10945 (1960).
[47] Order No. E-10057, March 1, 1956.
[48] *Regulation Policy Statement No. 2*, 22 Fed. Reg. 2241 (1957), superseded Jan. 7, 1958, codified as § 399.28.

pliance for appropriate action.[49] In order to provide more time to examine "complex and novel questions of policy or law"[50] the Board extended the filing time from 30 to 60 days before the flight date.[51] The Board was not alone in passing on these questions. Under the exemption procedure, applications could be and often were opposed by other airlines.[52]

The scheduled carriers still enjoyed a right of first refusal. However, the route carrier could not pre-empt the non-sked's application if it charged in excess of 5% more for the same equipment. If the regular carrier provided a better plane, it was allowed to bid ten percent more and still keep the job. The Board also reserved the right to decide that the non-sked's offer was unreasonably low or that seating density was too high, thus further protecting the route carriers.[53] As matters developed this right of first refusal was not often used by the scheduled carriers during 1957.[54]

Methods of solicitation were more closely limited. The policy did not permit the carriers to employ anyone for the purpose of assembling members of a charter party into a group. Travel agents were allowed to act only after the members had formed the charter group.[55]

The Board established the "six months" rule for members of the charter group. If members of less than six months standing participated in the charter, the club assumed the burden of proving affirmatively that it had not solicited the public. National and state-wide organizations of "substantial size" were barred because they constituted too large a part of the public,[56] thereby codifying the *National Education Association* Case.[57]

A list of thirty-two detailed questions about the chartering organization had to be answered. Any one of a number of detailed rules could be grounds for denial of exemption.

The Board stated that in deciding whether a particular exemption should be granted it would employ a "case-to-case basis" in the light of the statutory standards of Section 416(b) of the Act.[58] The *American Airlines* case of 1956[59] required the CAB to make specific findings in exemption cases, not to mouth statutory standards in conclusory fashion. The case had upset the Board's regulation of irregular carriers and undoubtedly influenced its thinking as to the use of Section 416(b).[60] However, ruling on exemptions became a matter of routine.

At the end of the 1957 tourist season the Board invited comments and, after hearing oral argument, issued a new policy for 1958.[61] The Board was concerned with the fact that many groups had discovered that they were

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[49] See text, *infra* page ——.

[50] *Statement No. 2, supra* note 48.

[51] *Id.* at § 399.28(a).

[52] 14 C.F.R. § 302; See text, *infra.* p. ——.

[53] *Statement No. 2, supra* note 48, at § 399.28(c). The regulation on filing tariffs was amended to make it possible for non-certificated carriers to file tariffs for proposed service even though they had not yet received an exemption allowing the service. ER-220, Amend. No. 1 to pt. 221, adopted Mar. 28, 1957, effective April 4, 1957.

[54] *Regulation Policy Statement No. 3,* § 399.29, effective Jan. 7, 1958.

[55] *Statement No. 2, supra* note 48, at § 399.28(g,h).

[56] *Id.* at § 399.28(i).

[57] Order No. E-10057, March 1, 1956.

[58] 72 Stat. 771, 49 U.S.C. 1386.

[59] American Airlines v. CAB, 235 F.2d 845 (D.C. Cir. 1956).

[60] See text, *infra.* p. —.

[61] *Statement No. 3, supra* note 54.

ineligible at the last minute. For this reason the Board undertook to spell out for the first time just what sort of groups would be eligible. In practice the Board had been forming administrative rules in the course of rendering exemption decisions. Until now these were not easily available to the average group interested in chartering.

Specific numerical standards for the chartering organization were articulated. A local group could have 20,000 members whereas state-wide and nation-wide groups were limited to 10,000 and 5,000 members respectively. However, if there were some basis for selecting individuals from among a large group, so that the chartering class was limited, its absolute size might not be a bar.[62] The "six months" rule was continued, but this requirement was read in light of the "real interest" which the member had in joining the group based on difficulty in obtaining membership and the amount of time spent in the club's activities.[63] Groups were cautioned against allowing items to appear in the general press if likely to induce travel on the chartered plane.[64]

In the name of administrative convenience, the allowable activities of travel agents were very narrowly defined. An agent was not permitted to lay out money in order to aid a chartering organization in making up a brochure to aid the group in solicitation among its own members.[65] The agents complained that the Aviation Act makes no mention of their industry;[66] nonetheless, so long as the Board decided when the public interest justified granting an exemption there was little that they could do.

It had been suggested by some of the carriers that two groups be allowed to share an airplane. The advent of larger planes was making it more difficult for legitimate groups to charter a transatlantic craft, especially when the definition of eligible groups was gradually becoming more circumscribed. The Board rejected a "split-charter" rule saying that this would lead to a breakdown between charter and individually ticketed services. There might be hardship cases if it developed that one group was not eligible. The Board could also foresee the temptation to form an artificial fill-up group if a charterer could only fill half the airplane.[67] The rule against mingling passengers where more than one round trip was chartered was tightened so that one-way passengers were prohibited if the group had chartered a round trip.[68]

Forms were provided for the charterer, the agent, and the carrier to fill out. Chartering groups were asked to provide lists of their complete membership with addresses as well as passenger lists. Objectives, membership qualifications, and other details had to be provided. These requests undoubtedly stemmed from a sincere desire to obtain sufficient information to advise a group of its status; but this requirement placed a considerable burden upon the organization and the carrier. However, at least one writer at the time said that the Board's fuller articulation of requirements in 1958 made things a little easier for all parties concerned.[69]

As an aid to non-scheduled carriers the Board ended the right of first

[62] *Id.* at § 399.29 (C) (1).
[63] *Ibid.*
[64] *Statement No. 3, supra* note 54.
[65] *Id., Explanatory Statement.*
[66] Winchester, *Mass Passenger Transportation by Charter Aircraft*, Flying, May 1960, p. 89, 92.
[67] *Statement No. 3, supra* note 54, *Explanatory Statement.*
[68] *Id.* at § 399.29 (C) (4).
[69] Garrison, *supra* note 42.

refusal that existed until 1958. First refusal was only to apply during the off-season. The Board concluded that since the right had been used infrequently in 1957 there was no reason for extending this "artificial priority" in view of the other competitive advantages which the scheduled carriers enjoyed.[70]

The scheduled lines did not need prior permission to fly charters. The CAB changes, narrowing the eligible group standard, had not been applied to the route carriers. However, IATA Charter Resolution 045 set its own fairly strict "prior affinity" standard for eligible groups.

Until 1958 the activities of the foreign carriers in the charter field had been regulated principally by IATA. In August 1958 the Board issued a regulation governing part of the charter operations of foreign air carriers.[71] This was the culmination of a proceeding which had been launched the day before the *1955 Transatlantic Policy* had been handed down.

The purpose of the *Foreign Off-route Charter Service Investigation*[72] was to provide a legitimate legal basis under which holders of foreign air carrier permits could conduct off-route charter operations. The foreign carriers already had authority to conduct charters on their regular routes.[73] However, off-route charter operations had been conducted under a Section of the Air Commerce Act of 1928[74] which was not even designed to apply to aircraft engaged in common carriage.[75] No statute allowed off-route flights in common carriage by foreign air-carriers. The Aviation Act is quite specific about the need for a permit for these activities.[76] The Board is permitted to grant exemptions only to American carriers under Section 416(b).[77]

Since foreign countries liberally permitted American planes to fly off-route charters,[78] the CAB had stretched a point and allowed foreign carriers to conduct charter operations under the existing statute. The CAB had administered the Air Commerce Act since 1953.[79] In the interim approximately 4060 foreign off-route charter flights were authorized.[80] A small number of applications had been denied because of their common carriage aspects but the rest of the operation were permitted to continue in what was called a "legal no-man's land."[81] Although the Board evidently was willing to stretch a point to allow foreign charter operations, it had taken a very different view when a decision on the same common carriage issue involved the non-certificated lines eight years before.[82] As a result of the investigation the permits of all foreign carriers were

[70] *Regulation Policy Statement No. 3*, 14 C.F.R. § 399.29(D).

[71] 14. C.F.R. § 212 (1958).

[72] Docket 7173, Order No. E-12945, Sept. 8, 1958.

[73] See text, *infra* page —; *Foreign Off-route Charter Service Investigation*, Order No. E-12945, Sept. 8, 1958.

[74] This is now § 1108(b) of the Federal Aviation Act of 1958.

[75] *Foreign Off-route Charter Service Investigation, supra* note 73, Examiner's Recommended Decision 2.

[76] Federal Aviation Act of 1958, § 402, 72 Stat. 757, 49 U.S.C. 1372.

[77] Federal Aviation Act of 1958, § 416, 72 Stat. 771, 49 U.S.C. 1386.

[78] *Foreign Off-route Charter Service Investigation, supra* note 73, Examiner's Recommended Decision 3nn. 7,8,9.

[79] Prior to this time it was under the jurisdiction of the Civil Aeronautics Administration.

[80] *Foreign Off-route Charter Service Investigation, supra* note 63, Examiner's Recommended Decision 3.

[81] *Id.* at 2.

[82] *Transocean Air Lines, Inc., Enforcement Proceeding*, 11 C.A.B. 350 (1950); *Investigation, Seaboard & Western Airlines*, 11 C.A.B. 372 (1950).

amended to allow them to conduct off-route charter operations.[83] The Board also issued a regulation by which it reserved the right to decide whether individual flights should be authorized on a case-by-case basis.[84] Both the Bureau Counsel and TWA urged that all charter activities of foreign carriers be governed by the new regulation.[85] This proposal was rejected, however, and no CAB regulation has yet been issued governing foreign on-route charters.

The 1958 regulation provided for issuance of Certificates of Authorization on a "public interest" standard.[86] There was no numerical limit on frequency of operations but frequency was declared to be one criterion.[87] In order to specify the standards which would be applied under the regulation, a *Statement of General Policy* was issued interpreting Part 212 of the CAB Economic Regulations.[88] This document set forth many of the same standards applicable to the irregular carriers. There were some differences, however. Numerical limitations on the size of groups were not imposed, but size and area of residence were to be considered.[89] "Reasonable" organization expenses were allowed but no dollar amount was specified.[90]

One of the issues debated in the investigation was the eligibility of "spontaneous groups."[91] As mentioned before the Board felt strongly that these groups should be legally eligible. It had conditioned approval of the IATA Resolution 045 stating that approval would not be given unless IATA's "prior affinity" rule[92] were modified to allow spontaneous groups organized without public solicitation.[93] The trial examiner's report emphasized the point that the Board had always considered this important.[94] Subsequently IATA amended Resolution 045 by adding a provision specifically called Charters for Spontaneous Groups.[95] However, only by the closest reading of the Board's own rules, is one able to see how a spontaneous group might be eligible. The regulation of 1959 makes the possibility seem even more remote.[96]

The procedure which the foregn carriers had to follow was simpler than that required of the non-skeds. Instead of the 60 days notice required of the non-skeds, applications were required only five days in advance.[97] The foreign carriers were required to submit a simple one sheet application.[98] It was not necessary to serve carriers certificated to fly the proposed

[83] Order No. E-12945, Aug. 12, 1958 (date of amending).
[84] *Foreign Off-route Charter Service Investigation*, E-12945 Sept. 8, 1958, p. 20; 14 C.F.R. § 212 (1958).
[85] *Id.* at 20, Examiner's Recommended Decision 6.
[86] 14 C.F.R. § 212.6 (1958).
[87] *Id.* at § 212.6(b)(1).
[88] *Regulation Policy Statement No.* 5, 14 C.F.R. § 399.30 (1958).
[89] *Id.* at § 399.30 (IV (1).
[90] 14 C.F.R. § 212.1(b) (1958).
[91] *Foreign Off-Route Charter Service Investigation, supra* note 84, at 13; Examiner's Recommended Decision 14-17.
[92] IATA Charter Resolution 045 (4)(c).
[93] Order No. E-8103, Feb. 15, 1954.
[94] *Foreign Off-Route Charter Service Investigation*, E-12945, Sept. 8, 1958, Examiner's Recommended Decision 14-17.
[95] IATA Charter Resolution 045 (4)(b).
[96] CAB Econ. Regs. pt. 295, 24 Fed. Reg. 4907 (1959).
[97] 14 C.F.R. § 212.5(b) (1958).
[98] CAB form 433 (Sept. 1958).

route.[99] The Board ruled that any further requirements imposed on the foreign carriers would be unduly burdensome.[100]

Economy fares were introduced in 1958[1] making it possible to fly round trip to London for $450. There was still a great deal of incentive to form charter groups. Traveling by charter saved a minimum of $150 and possibly $200 on a New York-London round-trip. On longer trips the savings were even greater.

The 1958 fares were not as low as the CAB had wanted, and when the jet supercharge became prevalent in 1959 the charter market boomed. Foreign off-route operations increased ten percent.[2] IATA charters rose from 90,000 in 1958 to 172,000 in 1959.[3] As an aid to enforcement, the *Transatlantic Charter Policy* was issued in regulation form just before the 1959 summer session.[4] The new regulation brought no important changes,[5] but it was intended that the regulation form would provide greater "stability and legal effect."[6] Evidently this was greatly needed. Problems of enforcement had substantially increased. The N.Y. Times reported that the system was "growing out of hand . . . the way discount houses had grown around retail stores.[7] The situation was described as "reminiscent of the last days of the Volstead Act."[8] Reports indicated that in New York City it was possible to join an organization retroactively for a fee of six dollars and thus become "eligible" for a charter trip. Some agents were ready to enroll the traveler in any one of a number of groups in order to fit their plans.[9]

The situation presented a dilemma for the honest traveler who did not wish to violate the Board's rules but, wanting to save money, saw the rules being violated all about him.[10] In reply the CAB said that the number of violations had been decreasing. It was aware of the economic incentives present and the temptation to break the rules. However, it had faith in the fact that most Americans were law abiding people and that with greater knowledge of the charter requirements it was thought that they would comply with the rules rather than try to evade them.[11] No one denied that there was a problem, but there was disagreement as to whether it was a mere question of enforcement or an issue of basic policy. There was no indication that any policy change was in the offing.

The Board's decisions under the regulations did not always clarify the situation, which had at times confused travel agents, clubs and airlines. The United Nations Flying Club, with a membership of less than one

[99] 14 C.F.R. § 212.5(d) (1958).

[100] *Foreign Off-Route Charter Service Investigation, supra* note 94, at 21.

[1] IATA, *World Air Transport Statistics* 4 (1960).

[2] 1959 CAB Ann. Rep. 29.

[3] IATA, *supra* note 1, at 39.

[4] CAB Econ. Regs. pt. 295, ER-273, 24 Fed. Reg. 4907 (1959).

[5] The right of first refusal which the route carriers had retained during the off season was eliminated completely. The draft release had included the refusal right, Draft release No. 102, 23 Fed. Reg. 9784 (1958), but the final version excluded it. Part 295, ER-273, 24 Fed. Reg. 4907 (1959).

[6] Explanatory Statement, Notice of Proposed Rule Making, EDR-21, 25 Fed. Reg. 10944, 10945 (1960).

[7] Friedlander, *Air Fares in Turbulence,* N. Y. Times, Mar. 15, 1959, § 2, p. 21, col. 1.

[8] Friedlander, *CAB Rules Regarding Charter Flights Widely Criticized,* N.Y. Times, July 5, 1959, § 2, p. 15, col. 1.

[9] *Ibid.*

[10] Letter from Rep. Emmanuel Celler, N.Y. Times, Aug. 2, 1959, § 2, p. 18, col. 5.

[11] Letter from CAB, N.Y. Times, Aug. 9, 1959, § 2, p. 21, col. 2.

hundred people, was given permission to include employees of the U.N. and its special agencies and members of missions to the U.N. in its charter group. When this did not prove sufficient to provide a plane-load the group was extended to include newsmen who covered the U.N. and various service employees. This seemed like a loose application of the CAB's "bona fide group" concept, especially after the second solicitation was made. On July 17, 1959 the CAB decided that this flight qualified under the rules.[12] A CAB official said that if all the people who worked in the Empire State Building wanted to set up a charter this would constitute a legitimate group so long as no more than 20,000 people worked there.[13] In light of the Board's generally strict insistence on bona fide membership, these interpretations were somewhat puzzling.

Early in 1959 the CAB had issued a new opinion in the *Large Irregular Air Carrier Investigation*.[14] Certificates were issued in place of the exemptions under which the irregular carriers had previously operated since the courts had placed limitations on the use of exemptions.[15] The services permitted the supplemental carriers were basically those which had been permitted under the exemptions. No change was made in the transatlantic situation. The Board stated, however, that the fate of the supplemental carriers in the foreign field would be made the subject of a future decision.[16]

The Board was also studying the matter of amending Part 207 so that certificated United States carriers would come under the same rules which governed other carriers.[17] In December 1959 it had tentatively imposed certain conditions on IATA Resolution 045 in an attempt to make the rules for all carriers uniform.[18] The following March, after comment had been filed, the Board compromised on certain IATA rules but insisted that IATA follow the CAB in imposing very strict rules on travel agents so that there would be no opportunity for them to "succumb to economic temptation."[19] A new edition of Part 295[20] incorporating a more liberal IATO standard for group size was issued in time for the 1960 season. The Board also revealed that it was studying the possibility of issuing regulations specifically applying to foreign on-route charters.[21]

A pair of decisions made in 1959 and 1960 showed an increasing attitude toward encouragement of the supplemental carriers. In the *Independent Airlines Association Commercial Charter Exchange* case,[22] the Board removed the restrictions imposed in 1955 which barred the exchange from commercial operations in the foreign field.[23] It accepted the position of the Independent Airlines Association that any new business would come from

[12] N.Y. Times, July 26, 1959, § 2, p. 17, col. 7.
[13] *Ibid.*
[14] Order No. E-13436, effective Jan. 29, 1959.
[15] American Airlines v. CAB, 235 F.2d 845 (D.C. Cir. 1956); in connection with issuance of certificates, the Board promulgated ER-263, Amendment No. 1 to Part 207, effective March 30, 1959, which made it clear that Part 207 did not apply to the new certificated supplemental carriers.
[16] 1959 CAB Ann. Rep. 29.
[17] *Id.* at 30.
[18] Order No. E-14789, Dec. 29, 1959.
[19] Order No. E-15047, March 28, 1960.
[20] ER-305, 25 Fed. Reg. 5322 (1960).
[21] Order No. E-15047, March 28, 1960, at 5.
[22] Order No. E-14638, Nov. 12, 1959, Docket No. 6580.
[23] *ACTA-IMATA Commercial Charter Investigation*, 20 C.A.B. 760 (1955).

"untapped potential" or from increased competition with foreign carriers[24] agreeing there was no showing that certificated carriers would be affected. The decision made it easier for supplementals to coordinate civilian and military passenger and cargo flights so that idle ferry mileage would be reduced and the carriers would be in a better bidding position.[25] Five months later the Board denied the scheduled airlines permission to combine efforts to help charter business holding that it would violate the antitrust laws and hurt the supplemental airlines.[26] The position of the supplementals had shifted.

As mentioned previously[27] the 1960 charter season turned out to be a record one in many respects. Charter flights accounted for eleven per cent of transatlantic air traffic. The CAB admitted in November that there had been a defect in its policy of using the supplemental carriers as a stop gap measure. Without a certain amount of security, their availability was being endangered. Even with the advent of jets, it was not always possible to find aircraft available for charter service. It was noted that the identity of the carriers participating in the charter trade had not been consistent from year to year. In the early years the certificated cargo carriers had ocupied an important share of the market.[28] Seaboard & Western, for example, relied heavily on charter flights as an aid to its scheduled cargo service.[29] Participation by the certified cargo lines has diminished in recent years while the proportion of charters carried by the supplementals has increased.[30] The supplementals objected to the lack of stability of the market, saying that competition from the scheduled lines in the charter field was not predictable. It was their view that protection was needed because the scheduled airlines were "sporadically throwing large amounts of surplus equipment into the charter field with little continuity or permanence of purpose." Therefore it was suggested that the scheduled airlines be limited in their rights to conduct charter flights.[31]

The Board took note of the fact that the complicated procedures necessary to conduct charter flights had a definite influence of the attractiveness of the market to the smaller operators and that the route carriers might not maintain a piston aircraft fleet to serve a seasonal market. Jet capacity and costs made them less practical for charters.[32] Therefore the Board decided to review the field and instituted the *Transatlantic Charter Investigation* to determine whether it would be advisable to grant certificates to non-route carriers so that they might be prepared to supplement the scheduled carriers by providing charter service on a sustained basis.[33]

While the *Investigation* is pending, the Board has granted seasonal exemptions to carriers applying for certificates. The exemptions run from April to September and are renewable each year. The basic requirements

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[24] Order No. E-14638, Nov. 12, 1959, at 13.

[25] Clayton Burwell, Pres., Independent Airlines Ass'n, *Lecture on Supplemental Air Carrier Service* at American Univ. School of Bus. Admin., Nov. 11, 1960, p. 15 (mim.); Order No. E-14638, Nov. 12, 1959, at 12.

[26] N.Y. Times April 10, 1960, p. 32, col. 6.

[27] See text, *supra* page ——.

[28] 25 Fed. Reg. 10944, 10945 (1960).

[29] *Independent Airlines Ass'n, Commercial Charter Exchange,* Order No. E-14638, Nov. 12, 1959, p. 12.

[30] 25 Fed. Reg. 10944, 10945 (1960).

[31] Burwell, *supra* note 25, at 28.

[32] 25 Fed. Reg. 10944, 10945 (1960).

[33] Order No. E-16023, Nov. 14, 1960.

for a charter group are unchanged but it is no longer necessary for carriers to receive individual exemptions for each flight. If the charter does not completely conform to Part 295, a request for waiver will have to be presented at least thirty days before the proposed flight.[34] The Board has said that it eliminated the requirement of individual approval because it now believes that the standards for charter eligibility are sufficiently precise and understandable so as to preclude violations on a large scale.[35]

The Board expects this result because of the great administrative and economic burden involved, and because of the competitive disadvantage stemming from the charterer's knowing that specific authorization had to be obtained from the Board.[36]

Following a season of poor business on the Atlantic in 1961, IATA came forward with a proposal to carry groups of twenty-five or more persons traveling in economy class service at a reduction of thirty-eight per cent from normal fares. This plan makes possible a New York-London trip for $300 and is available to both "prior affinity" and "spontaneous" groups.[37] Its impact on charter business has been immediate. Flying Tiger reported that twenty of its charter contracts were canceled with the announcement of group fares. The CAB held a hearing on the group rates on March 27, 1962. At this hearing many of the supplemental carriers opposed the rates on the grounds that the lower fares would ruin their charter business. Nonetheless, on April 16, 1962, the Board approved the group fares through next year, saying that the new rates would help the scheduled carriers fill empty seats. Two Board Members suggested that the Part 295 carriers be allowed to sell split charters to groups of fewer than seventy.[38]

In announcing the *Transatlantic Charter Investigation* the Board evinced an interest in creating a new class of international airline with permanent authority to fly charters. Its decision on group fares will no doubt be crucial to any decision it may make in the *Investigation.*

III. Legal Basis; Interpretation and Administration

In recent years the CAB has been working toward uniform charter standards for all classes of carriers under its jurisdiction.[39] Due to a difference of position in the regulatory scheme, a variety of techniques has been used in an attempt to achieve this end. An understanding of the way charter flights are regulated requires an exploration of the different ways in which the problem has been attacked.

Three main classes of air carriers are concerned with providing transatlantic charter service. They are (1) United States route carriers, certificated to fly passengers across the Atlantic, (2) foreign air carriers, and (3) United States supplemental and cargo carriers. Each is regulated in a different way.

A. *Foreign Air Carriers*

There were no CAB regulations concerning charters by foreign air

[34] Part 295, Revision, 26 Fed. Reg. 3628 (1961).
[35] Proposed Regulation, § 295.3, 25 Fed. Reg. 10944, 10945 (1960).
[36] Part 295 Revision, 26 Fed. Reg. 3628 (1961).
[37] Order No. E-18075, March 5, 1962, approving the plan until May 31, 1962.
[38] N.Y. Times, April 17, 1962, p. 57, col. 1.
[39] 1959 CAB Ann. Rep. 30.

carriers until the *Foreign Off-route Charter Investigation* of 1958[40] As a result of the *Investigation* a regulation was issued governing flights conducted off the routes for which the carriers held permits.[41] There are no CAB regulations for on-route charters. Therefore charters by foreign carriers are regulated in two different ways.

1. *On-route Charters.*

a. *The Role of IATA.*—Control of on-route charters has been maintained by resolutions of the International Air Transport Association. Agreements must be unanimous. Since each member has a veto on all resolutions, many are products of extensive compromise.[42] In keeping with the terms of the Chicago Convention of 1944,[43] Section 402 of the Federal Aviation Act provides for granting permits to foreign air carriers, specifying the points between which the carrier may engage in air transportation. Clearly charter flights are "air transportation."[44] Therefore these carriers may fly charters on their permitted routes.

For many years IATA has had a resolution governing charter flights. Under the Federal Aviation Act, United States carriers must file copies of inter-airline contracts with the CAB.[45] Section 412(b) of the Act gives the Board the power to disapprove contracts which it finds are not in the public interest. Approval by the Board provides immunity from antitrust laws.[46] Without immunity many IATA agreements would be illegal.[47]

IATA Resolution 045, concerning charters, has been approved and amended by IATA members on a year to year basis. Each time that the resolution is renewed the Board has the opportunity to pass on its terms.

In reviewing IATA Charter Resolution 045 the CAB has used the technique of conditional approval. The Board lists the conditions under which it will find that the agreement is not adverse to the public interest.[48] A literal reading of the conditioning orders makes it seem that failure of IATA to include the condition in its resolution will automatically result in disapproval by the CAB.[49] However, the Board has been more flexible in this respect. At least one writer has suggested that these conditions are merely indications by the CAB as to what it wants the next IATA conference to adopt.[50] Even if IATA does not adopt the Board's conditions, its members are still bound by the terms of the old resolution.[51] Flat disapproval would leave IATA members with no rule, something the CAB has never done.

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[40] Order No. E-12945, Sept. 8, 1958.

[41] 14 C.F.R. § 212 (1958).

[42] See generally "Statement by the Director General of IATA" in "Monopoly Problems in Regulated Industries", *Hearings Before the Antitrust Subcommittee of the Committee on the Judiciary*, H. of R., 84th Cong., 2nd Sess., pt. 1, Airlines 1072 (1956). Provisions for the Regulation and Conduct of the Traffic Conferences of IATA, 5 IATA Bull. 19-22 (June 1947).

[43] Convention in International Civil Aviation, Dec. 7, 1944, Art. 1, 61 Stat. 1180, T.I.A.S. 1591 (effective April 4, 1947).

[44] *Foreign Off-route Charter Serivce Investigation,* Order No. E-12945, Sept. 8, 1958, p. 2, Examiner's Recommended Decision 2, 6.

[45] Federal Aviation Act of 1958, § 712(a).

[46] *Id.*, § 414.

[47] Price fixing, for example, is illegal *per se* under the Sherman Act. United States v. Socony-Vacuum Oil Co., 310 U.S. 150 (1940).

[48] Bebchick, *The IATA and the CAB,* 25 J. Air Law & Comm. 8, 13 (1958).

[49] *E.g., In the Matter of an agreement adopted by the Traffic Conference of the IATA relating to Charters,* Order No. E-15047, March 28, 1960, p. 5.

[50] Bebchick, *supra* note 48.

[51] *Ibid.*

In one case the Board attempted to get IATA to modify its "prior affinity" rule on charter group eligibility. It first conditioned the resolution in February 1954.[52] It was not until 1958 that IATA amended its resolution to include the "spontaneous group" provision,[53] although the Board had repeatedly conditioned the resolution in the interim.[54] The change came when it became certain that the Board was going to step in and issue its own regulation on the subject.[55]

In a recent incident the CAB took a more restrictive attitude. On March 28, 1960 the Board approved Resolution 045 subject to the condition that IATA follow a "no mingling rule" in cases where a group contracts for more than one round trip. The Board's theory was that if passengers do not move in plane-load groups the charter concept breaks down and approaches the single ticket idea.[56]

The IATA resolution was to go into effect on April 1, 1960 so that the members did not have a chance to approve the CAB conditions and make them part of their agreement. Five IATA members had filed comments contesting parts of the conditioning order as a result of a tentative announcement in December 1959[57] but IATA had not changed its position. The IATA rules say that the organization will only enforce a "commitment assumed through individual ratification by the members."[58] The Board's order indicated, however, that it assumed that its condition bound IATA members *ex proprio vigore*.[59] When IATA members continued to conduct charters without obeying the "no mingling" rule, the Board said that it was "considerably disturbed" that this should occur after the effective date of the Board's condition.[60] It spoke of the condition as having been "finalized, effective April 1" and said that it would communicate with the carriers because of the "apparent violation" of the condition.[61] There was evidence that IATA carriers had advised customers that mingling was permissible after the date of the Board's condition.[62] The precise enforcement status of these conditions is not clear. Under the provisions of the Chicago Convention the Board does have the power to regulate non-scheduled traffic,[63] and has done so in the case of off-route charters.[64] It is doubtful that conditioning the IATA resolution has the same result as the formal issuance of a Board regulation, which may be one reason

[52] *Pan American World Airways Inc., Et. Al., Re Rate Matters and Traffic Matters*, 18 C.A.B. 648 (1954).

[53] IATA Charter Resolution 045 4(b).

[54] Order No. E-9969, Feb. 2, 1956.

[55] *Foreign Off-route Charter Scrivce Investigation*, Order No. E-12945, Sept. 8, 1958, p. 13.

[56] *In the matter of an agreement adopted by the Traffic Conference of IATA relating to charters*, Order No. E-15047, March 28, 1960.

[57] *Ibid.*; Order No. E-14789, Dec. 29, 1959.

[58] Provisions for the Regulation and Conduct of the Traffic Conferences of IATA, 5 IATA Bull. 19 (June 1947). However, Resolution 001(7) provides, in substance, where a government imposes a condition in its approval of a resolution, such resolution shall not become effective if, within 30 days, any member advises the Executive Secretary that it opposes the resolution as approved subject to condition. If such notice is not received the condition becomes legally binding among members. Thus, the condition can become part of the operative resolution despite the fact that the resolution is not rewritten to embody formally the language of the condition.

[59] Order No. E-15047, *supra* note 56.

[60] *Seaboard & Western Airlines*, Order No. E-15364, June 10, 1960, p. 2.

[61] *Ibid.*

[62] *Flying Tiger Line*, Order No. E-15496, June 22, 1960, pp. 2, 3.

[63] Convention on International Civil Aviation, Dec. 7, 1944, Art. 5, 61 Stat. 1180, T.I.A.S. 1591 (effective April 4, 1947).

[64] 14 C.F.R. § 212 (1959).

why the Board is studying the idea of amending its regulations to apply to on-route charters.[65] As a practical matter there is a strong incentive for IATA to observe the Board's conditions. If at any time Resolution 045 should get too far from what the Board wants, the Board could always issue its own regulation instead of delegating the task to IATA.

b. *IATA Enforcement and Procedure.*—The CAB relies upon IATA to police its own resolutions. Under IATA rules members can be fined up to $25,000 for violations. The organization has its own staff of enforcement officers which conduct field investigations and act on complaints from competing member airlines.[66] IATA agents visit airline offices periodically to inspect charter contracts. Violations are referred to the Director General of IATA who appoints a three man commission to review cases.[67]

The enforcement proceedings of IATA have generally been kept secret.[68] As a rule the results of decisions are only circulated among the member airlines.[69] Several years ago, in response to the demands of the House Anti-Trust subcommittee, IATA released a partial list of its enforcement proceedings. Out of twenty-four cases mentioned, two involved charters. The exact nature of the violations was not specified and neither case resulted in fining although it was not clear that there was "no violation."[70]

Prior clearance is not required for IATA members conducting charter flights. As an initial step, the chartering organization is presented with a charter application.[71] This blank requires information about the purpose of the organization, its articles and by-laws, its size, the type of soliciting material used and many other details. The charterer is asked to warrant that all answers as to the bona fides of the group are correct. The carrier has a cancellation privilege if it "becomes aware of any conditions which are inconsistent with the rules and regulations of proper aeronautical authorities."[72] This application is retained by the carrier. It is not a contract. The carrier is not bound at this point.

The charterer is next confronted with the standard airline charter contract. The terms stated appear to be fairly simple and to the point.[73] One clause stipulates that the terms of IATA 045 are incorporated as part of the contract and that the charterer warrants that IATA 045 has been complied with as if it were set out in full.[74] Resolution 045 is a ten page, intricate document written in a very confusing style. To make things more complex, Resolution 045 ends with the caveat that it is subject to "applicable government reservations." It is not easy for the charterer to

[65] *Agreement adopted by the Traffic Conference of IATA relating to charters,* Order No. E-15047, March 28, 1960, p. 5.

[66] *How IATA Curbs the Maverick Lines,* American Aviation, Sept. 8, 1958, p. 57; IATA, *World Air Transport Background,* No. 4 (1957) (mim.)

[67] 21 IATA Bull. 115.

[68] American Aviation, *supra* note 66.

[69] 21 IATA Bull. 115.

[70] "Monopoly Problems in Regulated Industries," *Hearings Before the Antitrust Subcommittee of the Committee on the Judiciary,* H. of R., 84th Cong., 2nd. Sess., Part 1, Airlines, 1069 (1956).

List of Cases decided by IATA enforcement commissions concerning charters in which U.S. carriers were involved:

PAA & TWA v. KLM; no fine, notification. PAA v. Swissair; no penalty.

[71] IATA, *Charter Application,* Sept. 17, 1960 (mim.).

[72] *Id.* at 3.

[73] See, *e.g.,* British Overseas Airways Corporation, *Charter Contract.*

[74] *Id.,* cl. 14.

know what reservations are currently outstanding and to be sure of their current status. A charter transaction is not a simple one.

c. *Foreign Carriers Outside IATA.*—All of the scheduled transatlantic airlines are members of IATA except for Icelandic Airlines. Because of its unique situation Icelandic does not come under either the CAB charter regulations or IATA 045. It is a small line and does not usually seek charter business.[75] This is partly because it is free to set its own prices on individually ticketed fares and charges less than any other scheduled transatlantic airline. Icelandic evidently feels the effect of competition from the charter trade which undercuts even its low fares. Its president thinks that there has been abuse in the charter field. He has said, "It has gotten to the point where people with brown eyes organize a club to arrange a charter flight to Europe."[76]

2. *Off-route Charters.*

a. *Background.*—Holders of foreign air carrier permits conducting charter operations in other than their scheduled routes fall under both IATA Charter Resolution 045, which makes no distinction based on routes, and under regulations promulgated by the CAB.

At the conclusion of the *Foreign Off-route Charter Service Investigation* the Board amended the permits of foreign carriers, allowing them "to engage in charter trips in foreign air transportation without regard to points named in the foreign air carrier permit. . . ."[77] The Chicago Convention provides that each participating state may regulate international non-scheduled operations conducted for hire.[78] The Board's rule, Part 212, provides that for each off-route charter flight conducted there must be a finding by the Board that the trip is in the public interest.[79] The regulation offers several criteria defining public interest. These include (1) whether the carrier has frequently conducted similar flights, (2) whether the public was solicited in forming the charter group, and (3) whether the carrier has previously violated the regulation.[80] At the time that Part 212 was promulgated a document called "*Regulation Policy Statement No. 5*" was issued.[81] It described in detailed language what the Board meant by "public interest." It is not referred to in Part 212. The *Policy Statement* said that it could not cover all of the Board's standards since "determination of the public interest requires consideration of all the standards set forth in the Civil Aeronautics Act."[82] At one point in 1960 it was necessary to have not only Part 212 and *Regulation Policy Statement No. 5* but also a copy of an order modifying the *Policy Statement.*[83] The policy statement does not say that it is subject to individual Board orders. As a result, a request to the CAB asking for the latest regulation on the subject or even for the latest policy statement will not always produce all the necessary documents needed to find out the true state of

[75] Time, Sept. 5, 1960, pp. 67, 68; N.Y. Times, March 19, 1961, § 10, p. 5, col. 1, 2.

[76] Time, Sept. 5, 1960, pp. 67, 68.

[77] Order No. E-12945, Aug. 12, 1958; Permit to Foreign Air Carrier, as amended, persuant to Order No. E-12945, approved Dwight D. Eisenhower, Sept. 6, 1958.

[78] Convention on International Civil Aviation, Dec. 7, 1944, Art. 5, 61 Stat. 1180, T.I.A.S. 1591 (effective April 4, 1947).

[79] 14 C.F.R. § 212.6(a) (1958).

[80] 14 C.F.R. § 212.6(b).

[81] 14 C.F.R. § 399.30 (1958).

[82] *Id., General Provisions.*

[83] Order No. E-15047, March 28, 1960.

the law on this subject. This can be confusing for a potential charterer. The Board has issued a new policy statement replacing *Statement No. 5*. This new document incorporates by reference many of the provisions of Part 295, applying to supplemental and cargo carriers.[84] Standards for these two groups are now almost the same.

b. *Procedure.*—In order to secure permission for an off-route charter flight it is necessary to submit a form to the Board at least five days in advance of the proposed flight. If good cause is shown this period can be shortened.[85] The application is published in the "Weekly List of Applications Filed." The purpose of publication is to give competing carriers an opportunity to contest the grant of a Statement of Authorization. The application and supporting documents, if any, are open for public inspection at CAB offices.[86] However, because the application form does not provide very much information, it is difficult to see if the carrier has complied with the rules on the basis of the application alone. Since copies do not have to be served on interested parties and since the Board may act before the five day period has expired, there is little opportunity to contest these applications. The Board has decided that the possible burden on the applying carriers outweighs the harm to other airlines in these situations.[87]

After the Board has processed an application the result of its action is published in the "Status of Charter Applications" attached to the "Weekly List of Applications Filed." A letter is sent to the applicant giving notice of the decision. Copies of the letters are made available to interested persons on request,[88] but are not given the same general distribution as exemption orders under Part 295.

c. *Effect of Dual Regulation.*—IATA members continue to be bound by IATA Charter Resolution 045 even though they are also subject to the Board's regulations. IATA rules do not provide for waiver of resolutions.[89] Therefore approval of a charter application by the CAB does not excuse the carrier from any of the self-imposed IATA standards.[90]

Sometimes IATA 045 has been stricter than CAB standards. The period when IATA rules did not provide for "spontaneous groups" is an example of this. Even though the CAB conditioned IATA 045 so that Part 207 remained in force in its entirety, the Board's position on the "prior affinity" rule was not readily followed.[91] As a practical matter it is difficult for the Board to make IATA carriers follow a more liberal standard for charter groups than they choose to follow.[92]

In other situations the Board's rules have been more restrictive than IATA 045. Since prior permission is needed from the CAB in all off-route charter cases it is the narrower standard which will prevail.

While enforcement of IATA 045 is not within the province of the CAB, the Board will sometimes use IATA violations as an arguing point

[84] *Regulation Policy Statement No. 11*, Pt. 399.35, 25 Fed. Reg. 5327 (1960).
[85] 14 C.F.R. § 212.5(b) (1958).
[86] *Id.* at § 212.5(d).
[87] *Foreign Off-route Charter Service Investigation*, Order No. E-12945, Sept. 6, 1958, p. 21.
[88] 14 C.F.R. § 212.6(c).
[89] Provisions for the Regulation and Conduct of the Traffic Conferences of IATA, 5 IATA Bull. 19 (June 1947).
[90] *Regulation Policy Statement No. 11*, 25 Fed. Reg. 5327, n. 3 (1960).
[91] Bebchick, *The IATA and the CAB*, 25 J. Air Law & Comm. 8, 33 (1958).
[92] If discrimination is involved then § 404(b) of the Federal Aviation Act gives the Board a legal weapon. *Free and Reduced Rate Transportation Case*, 14 C.A.B. 481 (1951).

in its own decisions. One example will show how the Board considers both sets of rules. In May 1960 the Board denied BOAC the right to fly eight round trip charter flights for the British legal profession whose purpose was to attend conventions in the United States and Canada. The Board wrote a full opinion and handed down a formal order instead of its usual letter denying authorization.[93] The principal problem was the size of the group solicited. At this time the Board had no written numerical rule as to the size of chartering organizations. The *Policy Statement* merely stated that the Board would consider the size of the group and the area of residence of the members. Two months before this case, the Board had approved IATA 045 which allowed nation-wide groups of 15,000 to charter aircraft.[94] The Board said, however, that "in practice" it had construed a nation-wide group in excess of 5,000 members to be one drawn from the general public and therefore could not consider the group as eligible. In the course of its argument the Board noted that the IATA limit of 15,000 had been exceeded in this case and that it had no power to grant relief from the IATA resolution. BOAC was satisfied that it came close enough to the IATA limit so that it could carry the eight round trip charters. If the flight had been on a regular route, BOAC could have proceeded with the contract. If the group had been solicited from a smaller area CAB practice would have allowed it to run as large as 20,000. Evidently the Board thought that it was appropriate to use the same standard for "nation-wide" groups even though the United States and Britain are quite different in size. Although the Board's *Policy Statement* is written in flexible terms this case shows that it can be rigidly applied.

One can conclude that the charterer must look for regulations, policy statements, amending orders and rules developed "in practice" in order to judge an organization's eligibility. These must be interpreted in the light of the IATA resolutions with their various problems. Without criticizing the substance of the rules themselves at this point, it seems that a better integration of these documents might be achieved for the benefit of chartering organizations.

B. *United States Route Carriers*

1. *General Rules.*

The right of certificated American carriers to engage in charter operations is derived directly from the words of the Federal Aviation Act Section 401(e). The Act provides that "any air carrier may make charter trips . . . without regard to the points named in its certificate, under regulations prescribed by the Board."[95] Part 207 of the Economic Regulations has been promulgated by the CAB.[96] This Regulation has remained unchanged since its first appearance.[97] Different procedures must be followed depending on whether or not the charter flight is being conducted on the airlines' regular route.[98] In addition to Part 207, the

[93] *Applications of BOAC*, Order No. E-15301, May 31, 1960.
[94] Order No. E-15047, March 28, 1960.
[95] 72 Stat. 755, 49 U.S.C. 1371.
[96] 14 C.F.R. § 207 (1951).
[97] There has been one technical amendment. See text and note 105 *supra*, p. ——. The Board has studied the matter of amending Part 207 to include language comparable to that in other sections but it has not yet acted.
[98] 1959 CAB Ann. Rep. 30.

scheduled transatlantic airlines are also members of IATA and come under its sanctions, as foreign carriers do.

Restrictions for U.S. carriers are not very detailed.[99] Charter definitions are quite similar to those in Part 212 of the Economic Regulations, but part 207 has not been limited by policy statements. Consequently the standards for scheduled United States airlines appear to be more liberal than for other classes of carriers. However, IATA 045 binds the U.S. transatlantic lines and makes the rules substantially equal.

2. *On-Route Charters.*

Under the present rules no prior permission is needed for the airlines to conduct on-route charter flights, nor is there any limit to the number that may be flown.[100] Charterers must, however, file the IATA application.

3. *Off-Route Charters.*

When a scheduled U.S. carrier wants to conduct a charter flight on other than its regular route prior permission must be obtained. If the other airlines which fly the proposed route consent to the trip, giving notice of this fact to the Board is the only action needed. If permission is not obtained from the other route carriers then there must be a finding of public interest by the Board before the flight is allowed.[1] The standards which the Board uses to find if the grant is in the public interest do not appear in the regulation nor have they been articulated elsewhere. A procedural rule has been promulgated by the Board for these situations.[2] The carrier must set forth the pertinent details concerning the flight and serve other route-carriers.[3] Objecting carriers have five days to file objections and ten days more to give supporting reasons as to why the proposed flight would not be in the public interest, demonstrating, for example, that they are willing and able to conduct the flight themselves. It is paradoxical that even though supplemental and cargo carriers are no longer subject to route carriers' first refusal rights, off-route scheduled carriers must still follow the above procedure. As a practical matter, however, there are few occasions when it is used.

Part 207 of the Economic Regulations prevents a carrier from performing off-route charters during "any calendar quarter . . . which in the aggregate, on a revenue plane-mile basis, exceeds 2½ per cent of the revenue plane miles flown by it in scheduled air transportation during the preceding twelve month period." Since the scheduled lines fly extensive scheduled operations this provision has never had any effect on the airlines' capacity to conduct off-route charter flights.[4]

C. *United States Supplemental And Cargo Carriers*

1. *Statutory Problems.*

Regulation of supplemental and cargo carriers, *i.e.*, "Part 295 Carriers," has been left almost exclusively in the hands of the CAB. Since IATA is an organization of scheduled airlines very few of the carriers in this category are members. Seaboard & Western, a scheduled cargo carrier, is

[99] CAB Econ. Regs. § 207.8. An outline of Part 207 is presented in the text at pp. —— *supra.*
[100] 14 C.F.R. § 207.5 (1951).
[1] 14 C.F.R. § 207.8(b).
[2] 14 C.F.R. § 302.600.
[3] 14 C.F.R. § 302.601(a).
[4] *Foreign Off-Route Charter Service Investigation,* Order No. E-12945, Sept. 8, 1958, p. 18.

a member of IATA but no longer has voting privileges when it comes to passenger matters.[5] The Flying Tiger Line has the status of associate member and does not have voting privileges.[6] The only relevant regulation for this class of carriers is the Board's Part 295.[7]

Until April 28, 1961 Part 295 provided for granting single flight exemptions under section 416(b) of the Federal Aviation Act. Although compliance with the provisions of Part 295 virtually assured an exemption, the regulation stated that "each application will be considered and passed upon by the Board in accordance with the statutory standards of . . . the Act."[8] In *American Airlines* v. *CAB*[9] the court decided that for the Board to grant an exemption under the statute, it must make factual findings so that the court might judge their validity, not findings made in terms of statutory conclusions. In theory each set of facts was to be passed on separately.

The basic premise of the Act comes from section 401(a) which states that a carrier cannot engage in air transportation unless it has received a certificate from the Board authorizing that transportation. In order to provide an exemption from this section the Board must show that there is an undue burden placed on the carrier either because of the limited extent or the unusual circumstances of the proposed operations. It must also show that it is in the public interest that exemption rather than certification be used in that particular case. The court in *American Airlines* read in the further qualification that the exemption process could not be used to impinge upon the system of certificated airlines.

When individual exemptions were granted for charter flights it was easy to bring the facts under the requirements of the statute. Since most charter arrangements involve contracts for one round trip flight, it would have been too time consuming and too expensive to conduct a certification proceedings each time a contract was made. The Board stated that the fact that these contracts were made during a short period each year before the summer season was an unusual circumstance, not typical of air transportation in general. On this basis it concluded that use of the exemption procedure was valid, citing the "the undue burden" on the carrier because of both the "limited extent" and the "unusual circumstances" concerning the charter operation.[10] Some exemption orders refer to the public interest aspects of the particular chartering group.[11] This happened most when the order involved waiver of one of the provisions of Part 295. However, most decisions did not make a special public interest finding for the group concerned but relied on the fact that it had been the Board's experience over the years that supplementing the charter capacity of the scheduled airlines with other carriers was "necessary and desirable in the public interest."[12]

In April 1961 the Board began to grant blanket 180 day exemptions

[5] N.Y. Times, March 19, 1961, § 10, p. 5, col. 1, 3.
[6] IATA, *World Air Transport Statistics* 3 (1960).
[7] ER-305, 25 Fed. Reg. 5322 (1960).
[8] Section 295.1.
[9] 235 F.2d 845 (D.C. Cir. 1956).
[10] ER-305, 25 Fed. Reg. 5322 (1960).
[11] See, *e.g.*, *Capitol Airways*, Order No. E-15456, June 28, 1960. (Experiment in International Living); *Flying Tiger Line*, Order No. E-15256, May 30, 1960. (Mich. & Ann Arbor-Washteraw Council of Churches).
[12] ER-305, 25 Fed. Reg. 5322 (1960).

under section 416(b) of the Act.[13] The court limitations on section 416(b) would appear to be more serious when exemptions are not considered on a flight by flight basis, but are granted for 180 day periods. It is not so clear that certification is an undue burden in these situations.[14]

Another case, however, indicates that the Board can conduct experiments, using the exemption process, as long as certification proceedings are also under way. It has been held that as long as the exempted carriers were parties to pending certification proceedings this would be enough of an unusual circumstance to justify use of exemptions.[15] The Board, in the *Transatlantic Charter Investigation,* has stated that exemptions will only be granted to parties actively seeking certification.[16] It was argued that pending certification proceedings are not an unusual circumstance.[17] However, the authority of this case would seem to protect these exemptions.

If certificates are eventually issued as a result of the *Transatlantic Charter Investigation* it will not be possible to give the carrier blanket permission to fly between any points which their business may demand. It has been held that the Act requires that certificates name specific terminal points.[18] Unless the certificates have detailed lists of authorized points, a certain amount of flexibility in the charter trade may be sacrificed through certification. It might be possible to continue the exemption procedure in unusual cases where terminal points are not covered by charter certificates. Whether one flight charter exemptions will still be granted if certificates are issued is not entirely clear.

2. *Administration.*

There have been problems in administering the Board's Charter regulations. Starting with the problems precipitated by the vague standards announced in 1949 the Board has been plagued by the problem of enforcing the rules concerning charter eligibility. In the early days of the policy the rules were of a general nature, leaving the Board to make individual judgments. After 1955 the Board made standards more precise. This has aided administration as the volume of charter traffic has increased. Most of the exemption decisions have been delegated to the Board's staff. There are many devices that the Board has used to solve its administrative problems.

a. *Advisory Procedures.*—Chartering groups may seek advisory opinions from the Bureau of Economic Regulation so that eligibility can be determined at an early stage.[19] Detailed representations can help to establish the group's status in reliable fashion before travel plans have proceeded very far. Carriers must inform groups making reservations that the advisory procedure is available.[20] Advisory opinions helped to cut down the number of formal denial orders under the individual exemption procedure.[21] Because carriers have submitted applications which the Board

[13] Revision 26, Fed. Reg. 3628 (1961).
[14] *Id.*, (Dissenting opinion).
[15] American Airlines v. CAB, 231 F.2d 483 (D.C. Cir. 1956).
[16] Revision, 26 Fed. Reg. 3628 (1961).
[17] *Id.*, (concurring and dissenting opinions).
[18] United Airlines v. CAB, 278 F.2d 446 (D.C. Cir. 1960).
[19] CAB Econ. Regs. § 295.60.
[20] CAB Econ. Regs. § 295.12.
[21] The Board has held that advisory opinions are not illegal *ex parte* communications. *Flying Tiger Line,* Order No. E-15520, July 8, 1960, p. 2, n. 1; Brief TWA, Docket 11460.

rejected under the individual system, the Board does not believe that the carriers would necessarily have performed such charters on their own responsibility. Since there is no present pre-flight filing requirement, the Board expects that carriers, for their own protection, will ask for advisory opinions in doubtful cases.[22]

b. *Adversary Proceedings.*—During peak seasons prior to April 1961 as many as seven CAB staff members were employed in processing charter applications.[23] Their task was aided by the fact that the scheduled route carriers sometimes submitted briefs pointing out Part 295 violations.[24] Detailed application forms had to be served on these competing carriers.[25]

With seasonal exemptions the Board no longer has formal surveillance by the route carriers as an aid to enforcement. When it adopted the present system it rejected a proposal that charter data be filed prior to each flight and that it be open to public scrutiny. The Board stated that substantial violations would be readily known to competing carriers and appropriate complaints could be made.[26]

c. *The Board's Decisions.*—Under the single exemption rules the Board was not always rigid in interpretation of Part 295. The principles articulated in exemption cases continue to be applied as standards for advisory opinions and granting of waivers.[27] An examination of the exemption orders issued over a period of several years indicates a strict but not inflexible application of the regulations. The most common provision waived was the sixty-day filing requirement,[28] now abolished. Even if no real excuse were given, late filing did not stand as a bar if there were no other defects in the application.

The Board tends to excuse charters which go beyond the normally allowable scope of solicitation[29] if there is some intermediate screening process which limits the potential size of the group and if the Board feels that the group has public interest aspects. An exemption was granted for American Youth Hostels, although easy to join and drawing from a nationwide membership, because the trip included "a degree of rigorous travel on foot or bicycle with low cost hostel accommodations which severely limits appeal to the traveling public."[30] Another group, solicited generally from students of several states was approved because "the program was purposeful, educational . . . not designed to promote cheap air transportation or attract the itinerant traveler."[31] A group of foreign students coming to live with American families was approved because "the number of participants is severely limited by finding host families," there was a screening process, and outsiders had donated funds.[32] Another group consisting of Boy Scouts drawn from a number of different European countries, was potentially very large. However, the Board reasoned that there

[22] CAB Econ. Regs. pt. 295, Revision, 26 Fed. Reg. 3628 (1961).
[23] Letter from CAB to author, March 7, 1961.
[24] *Flying Tiger Line*, Docket No. 11460, Order No. E-15520, July 8, 1960. (English working girls seeking American jobs held not bona fide group.)
[25] CAB Econ. Regs. § 295.13, 25 Fed. Reg. 5322 (1960).
[26] CAB Econ. Regs. pt. 295, Revision, 26 Fed. Reg. 3628 (1961).
[27] CAB Econ. Regs. pt. 295.3.
[28] CAB Econ. Regs. § 295.13, 25 Fed. Reg. 5322 (1960).
[29] CAB Econ. Regs. § 295.30. The limit for non-local groups, now 20,000, has increased over the years.
[30] Order No. E-15260, May 23, 1960.
[31] Order No. E-15240, May 17, 1960 (Int'l Center, Univ. of Louisville).
[32] Order No. E-15456, June 28, 1960 (Experiment in Int'l Living).

was some selection process involved so that this group might be described as set off from the general public. There was also the very practical reason of not wanting to strand the group in the United States.[33]

Judging the appropriate unit which may form an entity for charter purposes leads to fine questions of fact. The *United Nations Flying Club* case mentioned earlier represents a liberal approach.[34] One decision allowed Brown University and the Rhode Island School of Design to charter one airplane, citing the common ties that the schools had such as joint library privileges, common extra-curricular activities, and exchange of students for some courses.[35] A less liberal decision allowed members of the N.Y. State Medical School to charter an airplane but excluded members of its affiliated hospitals.[36]

Where a provision affects the status of only one or two members of the charter group the Board tends to be quite strict about waiving provisions. In a rare case the daughter of a professor was allowed to travel on a university charter even though her father did not participate in the group. The Board explained that it was planning to change the rule governing these situations anyway.[37] In most cases, however, members must come precisely within the definitions found in the regulations or permission will not be granted.[38]

Since there is always an incentive for private parties to organize charters for profit, the Board has strictly limited organization expenses. If the listed expenses exceed the permitted dollar amounts,[39] the Board will usually grant the exemption subject to the condition that the expenses charged be lowered.[40] If expenses are much higher than those permitted this can be grounds for flat denial, especially if the organization has consistently high expenses on repeated trips.[41]

Under the regulations persons are presumed not to be bona fide members of the chartering organization if they have not been members for six months before the flight date.[42] This presumption can be rebutted. At the same time the decisions show that the six-month rule does not provide a shield of safety if reasons for joining the organization are suspect. The Board has said that technical compliance with the six months rule will not remove a "presumption of public solicitation."[43] If there is an abnormal increase in the club's membership during the years in which it begins to sponsor charter flights and if the organization has nominal entrance requirements, the Board may conclude that there has been public solicitation even if all the members come with the six months rule.[44] This could

[33] Order No. E-15630, Aug. 8, 1960 (Belgian Inter-Federal Boy Scouts).

[34] See text *infra* p. ——.

[35] Order No. E-15348, June 8, 1960.

[36] Order No. E-15305.

[37] Order No. E-15348, June 8, 1960. The present rules permit participation of the immediate families of bona fide members even if the members do not travel with the group. CAB Econ. Regs. § 295.32.

[38] Order No. E-15348, June 8, 1960 (brother of member not allowed); Order No. E-15255 (Univ. of Chicago, close relatives banned).

[39] Permitted expenses are $300-500 per round trip, depending on group size. CAB Econ. Regs. § 295.33.

[40] See, *e.g.*, Order No. E-15207 (Polish Friendly Society).

[41] Order No. E-15309, June 1, 1960 (Yorkville Gesellkeits Klub).

[42] CAB Econ. Regs. § 295.2(j).

[43] Order No. E-15309, June 1, 1960; Order No. E-15354, June 9, 1960 (dictum) (Catholic Kolping Society).

[44] Order No. E-15309, June 1, 1960.

get the Board into highly subjective questions of individual sincerity but not if used only in more extreme cases where other violations are also found.

The Board has steadfastly maintained that allowing mingling of planeload groups would break down the charter concept which requires "the participant to subordinate his own personal wishes to the wishes of the charter group as a whole."[45] Consequently the Board has been quite strict in its prohibitions against permitting return trip mingling. The rule also states that only five per cent of the passengers may travel one-way if a round trip flight is chartered.[46] A Yale University exemption was granted only on the condition that this five per cent limit be maintained, especially when it was shown that one-way passengers had been solicited.[47] On the other hand a group from Harvard managed to get the mingling provision waived although it appeared at first that exemption would be denied. In the Harvard case students were offered a choice of any one of eleven flights in both westbound and eastbound directions. At the time that the trips were planned, IATA carriers on their own routes were not bound by the "no mingling" rule. The flights were planned with IATA carriers. Later it became necessary to employ an American carrier and seek exemption under Part 295. The Board first issued an opinion flatly denying exemption, because of the mingling involved, and said that the group proceeded at its own risk in assuming none of its flights would have to be carried under Part 295.[48] The IATA carriers proceeded with their contracts despite the fact that the Board had conditioned IATA 045 to prevent mingling. Twelve days later, the group again attempted to obtain the exemption, this time using a different carrier, albeit one also subject to Part 295. The Board considered this as an appeal of the same case even though it was being brought by a different carrier. The new carrier was granted the exemption. The Board stated that it did not find that the violations as to mingling had been corrected. However, four flights had already departed for Europe where the addresses of the passengers were unknown. Denial of the exemption would result in stranding the passengers in Europe and cause "substantial hardship" to those involved. Therefore, three days before the flight date the Board reversed itself and allowed the second carrier to conduct the flights as requested.[49]

The case shows that where hardship may result the Board will not necessarily be inflexible in its administration. At the same time the Board was put in a position where it had to issue two contrasting opinions on the same facts within a very short period of time.

d. *Post-flight Sanctions.*—The season exemptions have largely eliminated the pre-flight screening devices described above. One Board member has viewed this development as a failure to provide a "prompt and adequate remedy."[50] However, there are a number of sanctions left to the Board which can be used after the flight has taken place both to prevent recurrence of violations and to punish violators.

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[45] *BOAC,* Order No. E-15301, May 31, 1960. (British Legal Professions.) This case was decided under Part 212, but the principle is the same.

[46] CAB Econ. Regs. § 295.14(c); *Agreement Adopted by Traffic Conference of IATA,* Order No. E-15047, March 28, 1960, p. 2.

[47] Order No. E-15238.

[48] *Seaboard & Western Airlines,* Order No. E-15364, June 10, 1960.

[49] *Flying Tiger Line,* Order No. E-15496, June 22, 1960.

[50] CAB Econ. Regs. pt. 295, Revision, 26 Fed. Reg. 3628 (1961).

As an aid to enforcement the carrier must file monthly statements giving basic information on every charter flight.[51] In addition very detailed data certified by the charterer, travel agent and carrier as to each charter operation must be retained by the carrier for two years, available for Board inspection.[52]

The Bureal of Enforcement conducts investigations of charter cases. The Bureau has no members whose only duty is to patrol the charter field, but it will act on complaints made by private parties. Cases are sometimes referred to the Bureau from the Bureau of Economic Regulation which processes applications under the various charter provisions. Investigation is usually done by correspondence with the charterer and the air carrier involved since the Bureau's staff is not large enough to conduct field investigations in each case. However, under some circumstances a Special Agent will be sent to the scene.[53]

The carriers have an important stake in maintaining clean records. When it inaugurated seasonal exemptions the Board stated that the self-interest of the Part 295 carriers in remaining eligible for exemptions and eventual certification constitutes a strong incentive for them to conform to the regulations. The seasonal exemptions could be revoked at any time. A new exemption is necessary for each season.[54] In recent years the compliance records of the carriers themselves have ceased to be the issue that they once were.[55]

Violations by chartering groups constitute another problem. Under the single exemption policy the Board considered records as part of the public interest test.[56] Since many organizations make charter flights an annual event this gave the groups reason for care. However, the Board no longer rules on individual groups and has lost this sanction.

Although the Board has the power to bring formal enforcement proceedings,[57] there has been only one such proceeding under the charter regulations.[58] This case reached the formal order stage because the complainant, a travel agent, had filed a motion before the Board asking for institution of proceedings. No adverse finding was made.[59]

Various perjury and false statement statutes provide an additional enforcement weapon. Charter statements must be sworn to by officials of the charterer, the travel agent and the carrier. The texts of the various penal statutes are printed conspicuously on the forms provided.[60] Criminal reference is awkward in practice.[61] However, the presence of the statutes on charter forms probably has a helpful *in terrorem* effect.

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[51] CAB Econ. Regs. § 295.6.

[52] CAB Econ Regs. pt. 249.

[53] Letter from CAB to the author, March 7, 1961; Some travel agents have been described as "vigilante groups" who have acted to inform the CAB of violations. Friedlander, *Hope for the Traveler*, N.Y. Times, Jan. 15, 1961, § 2, p. 1, 20, col. 3.

[54] CAB Econ. Regs. pt. 295, Revision, 26 Fed. Reg. 3628 (1961).

[55] Compare *Regulation Policy Statement No. 2*, 22 Fed. 2241 (1957), with *Notice of Proposed Rule Making*, 25 Fed. Reg. 10944 (1960).

[56] Order No. E-15256, May 20, 1960. (Mich. & Ann Arbor-Washtenaw Council of Churches) (exemption granted but greater burden of proof imposed); Order No. E-15309, June 1, 1960 (Yorkville Gesellkeits Klub).

[57] 14 C.F.R. 302.200; Federal Aviation Act of 1958, § 1001-09.

[58] Letter from CAB to author, March 7, 1961.

[59] University Travel Co. v. Flying Tiger Line, Order No. E-12990, Sept. 18, 1958.

[60] 18 U.S.C. § 1621; 49 U.S.C. § 1472.

[61] Until April 1961, 18 U.S.C. § 1001 was used on forms. The Bureau of Enforcement referred three cases to the Justice Department under this section. Two were not prosecuted because of

IV. Charter Flights; The Public Interest

Much criticism has been directed against the charter rules. Representative Celler, Chairman of the House Anti-trust Subcommittee has called them "arbitrary and illogical."[62] The president of the supplemental carrier trade group has pleaded for "a more sensible definition" of what constitutes a charter, saying that the "magical and metaphysical affinity" of the group must be examined with a mental microscope."[63] A *New York Times* writer has described the standards as "senseless, outside the realm of bureaucratic thinking."[64] In order to evaluate these comments it is necessary to examine briefly the "realm of thinking" inside which these rules have been made.

Since the Second World War the CAB has been committed to a policy of letting the initiative for setting transatlantic fares lie with IATA.[65] IATA members fix uniform fares. The requirement of a unanimous vote makes it possible for the least efficient of the airlines to influence the IATA rate.[66] It has been admitted that at IATA conferences American carriers generally have taken the initiative in proposing reductions while foreign lines have resisted these changes.[67]

In this context the present dual system of pricing has evolved. Charter passengers pay about $260 for a round trip from New York to London while others pay $486 and up.[68] The CAB has called attention to the seasonal nature of the charter business. It has said that if the public had access to charters on a less restricted basis the scheduled carriers would not have the opportunity to accumulate profits during the summer in order to provide for the off-season. It has defended the rules by saying that the restrictive charter concept began with IATA and was later adopted and approved by the United States and other governments.[69] This seems like another way of saying that the CAB has been committed to supporting the IATA rate structure.

If the charter regulations seem to discriminate against part of the public it is because they are meant to. If the rules are dedicated to limiting charter traffic to a "safe amount," then it does not matter exactly what rules are used. Someone will always be ineligible for the lower fares. It is worth noting, however, that in Europe IATA regulations permit solicitation of individuals for charter flights if the flight is part of an inclusive tour at least as expensive as what normal airplane fare would be.[70] This has produced a competitive, but workable result.[71]

Of course the Board deserves credit for the *1955 Transatlantic Charter Policy* and its successors which have made it possible for supplemental carriers to compete on the North Atlantic route. Along with Icelandic Air-

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the strong showing that the courts have required. A third was under study. Letter from CAB to author, March 7, 1961.

[62] Letter from Rep. Celler, (D., N.Y.) to the N.Y. Times, Aug. 2, 1959, § 2, p. 18, col. 5.

[63] Clayton Burwell, *Lecture on Supplemental Air Carrier Service*, American Univ. School of Bus. Administration, Nov. 11, 1960, p. 29 (mim.).

[64] N.Y. Times, July 5, 1959, § 2, p. 15, col. 1.

[65] See generally, "Monopoly Problems in Regulated Industries," *Hearings Before the Antitrust Subcommittee of the Committee on the Judiciary*, H. of R., 84th Cong., 2d Sess., at 1023.

[66] *Id.* at 1054.

[67] *Id.* at 1038.

[68] The current IATA round trip fare from New York to London is $900 first class.

[69] Letter from CAB to N.Y. Times, Aug. 9, 1959, § 2, p. 21, col. 2.

[70] IATA Charter Resolution 045(8).

[71] Brice, *Holidays by Air*, Aeronautics, May 1960, p. 21.

lines, a scheduled airline which does not belong to IATA, they have provided a yardstick for transatlantic fares. If it were not for their presence IATA probably would have set uniform charter rates above what are now being charged.[72] The Board has refused to include a rate floor in Part 295.[73] The IATA carriers justify their own dual pricing system by maintaining that great savings are made when the airlines deal on a charter basis. The airline is guaranteed a flat rate for the plane and does not have to risk taking off with empty seats. It also claims to save money in sales effort and bookkeeping by dealing only with the chartering organization and not with individual passengers. It is doubtful, however, that the bookkeeping and sales savings are so great as to justify such a large price differential. The airlines maintain large permanent organizations for this purpose anyhow.[74] During the peak season, when most charters are carried, the load factor on transatlantic flights runs above ninety per cent in economy class[75] so that the full plane argument is not too compelling. With the new group rates it seems even less persuasive. It is significant that transatlantic fares have always been disproportionately higher than transcontinental fares even though distances are approximately equal and the same equipment is used on both routes.[76] The recently approved proposal to give a 38 per cent discount to groups of twenty-five only points up the issue of whether the basic fare structure serves the public interest.[77]

Would it be in the public interest simply to allow the charter business to continue to grow along the lines that it is following now? Under the present rules there are a number of reasons why more charter flights will not necessarily lead to the sound development of transatlantic air transportation. Lack of flexibility is the main disadvantage in charter travel. The passenger must travel on the dates that his group selects. If the group has chartered a round trip then he must travel on both legs of the flight.[78] He cannot pick his traveling companions if they do not belong to the chartering organization. If he must change his plans and return home at a different date his seat cannot be resold. Arrangements for the flight must often be made many months in advance. The traveler can never be sure just how much the flight ultimately will cost. Most charters are run as cooperative ventures with the charterer's responsibility limited to making business arrangements for the flight. Therefore, even after the flight is over, extra charges may be made if unsuspected expenses have occurred.[79] Instead of dealing with an airline or professional travel agent the charter is often organized by inexperienced amateurs. There is always the chance that at the last minute the flight may be found not to conform to the appropriate regulations and may never take off at all. Equipment used is usually not the most modern available but has been taken off

[72] *Hearings Before the Antitrust Subcommittee, supra* note 65, at 1080, para. 65.

[73] CAB Econ. Regs. pt. 295, Revision, 26 Fed. Reg. 3628 (1961).

[74] N.Y. Times, July 5, 1959, § 2, p. 15, col. 1.

[75] IATA *World Air Transport Statistics* 45 (1960)

[76] Present jet fare from New York to Los Angeles is $138.60 plus 10% tax; from New York to London, $270. In 1959 the transatlantic rate was 150% more than transcontinental rate. For an interesting comment on this subject see *Hearings Before the Antitrust Subcommittee, supra* note 65, at 1054. A defense is found in IATA, *World Air Transport Background*; "The Cost of Flying" (mim.) (1959).

[77] Order No. E-18075, March 5, 1962.

[78] CAB Econ. Regs. § 295.14(c).

[79] See, *e.g.*, Harvard Student Agencies, "Cooperative Air Charter for Members," (mim. form) (1961); Letter from Harvard Student Agencies to flight members (Sept. 1960).

regular runs. Jet aircraft are usually too large for most organizations to fill.

Under the Federal Aviation Act the CAB does not have the power to fix international rates. It can only alter them if they are "unjustly discriminatory or unduly preferential."[80] However, because of its privilege of disapproving agreements and removing anti-trust immunity from the carriers concerned, the CAB holds a powerful weapon over IATA.[81] By passing on individual rate resolutions it has the power to influence the level of international fares. It could even remove its support from the present price structure altogether by not approving IATA's price fixing machinery.[82] This may involve the United States carriers in problems of negotiating satisfactory agreements with other countries.[83] However, there are ways to deal with the fare issue.

V. Conclusion

By examining the growth of the Transatlantic charter market it is possible to see that the present situation has stemmed from a desire to provide sufficient air transportation without directly facing the problem of the prevailing IATA fare structure. If the charter business continues to grow in its present form it will not provide the convenient form of inexpensive air travel needed by the public at large. Although there may always be some legitimate demand for charter group travel, the present market is an artificial one created by technical restrictions. The current *Transatlantic Charter Investigation*[84] may develop ideas that will help the present process work more smoothly. However, until the rate structure is dealt with as a whole there will always be a problem of discrimination if the majority of the public is unable to take advantage of cheaper fares, and the problem of administration will follow as these people attempt to become part of the favored minority.

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[80] Federal Aviation Act of 1958, § 1002(f).
[81] Federal Aviation Act of 1958, § 412, 414.
[82] See letter from Emanuel Celler to N.Y. Times, Jan. 28, 1962, § 10, p. 1, col. 4.
[83] Cohen, *A Case History in International Air Fares and Rates Negotiation*, 27 J. Air Law & Com. 150 (1960).
[84] Docket No. 11908.

ESTIMATES AND ACTUALITY: COMPARATIVE COSTS OF BRITISH CROSS-CHANNEL AIRLINES, 1918-1924

ROBIN HIGHAM†

The two articles that follow are published as an illustration of the tremendous strides that have been made in air transportation in the past forty-odd years. Contrast, if you will, the absence of concrete data and the extent of speculation detailed in Dr. Higham's article on the problems of the fledgling British airlines' cross-channel operations, with the statistical detail available to air carriers engaged in international operations today as they plan for supersonic operations.

IT IS not possible to be definitive about the costs of establishing British overseas airlines for the simple reason that most of the early statistics simply do not exist. Many were allowed to go by default, some companies' accounts are not available or have been lost, and at least one company's records were destroyed during World War II air raids. Only those belonging to the Daimler Airway have been accessible. At the outset secrecy was regarded as essential. However, political reaction against Imperial Airways, Ltd., in the latter nineteen thirties resulted in a clause in the British Overseas Airways (Corporation) Act of 1939 compelling the publication of a full financial statement each year.

British overseas airline development was a natural outcome of the pre-war enthusiasm of a devoted band of semi-professionals and of the immense technological advances made during the course of World War I. Except for the stunt Hendon-Windsor Coronation air mail service of 1911, which made an operating profit of £1,460, there was no practical airline in England until after the war. However, schemes, including a pre-war one for a service to India via Constantinople, did appear.

The greatest difficulty faced by early companies was to find some data upon which to base their estimates and some patrons who were willing to loan risk capital. This was fully recognized by the distinguished company who sat on, or were co-opted to help with, the Civil Aerial Transport Committee appointed in 1917. This Report (*Cd. 9218*) was full of sound advice, based in part upon maritime experience, but none of the experts ventured any concrete financial proposals. However, the Committee did recognize that the fate of civil aviation was intimately concerned with that of the aircraft industry and almost as vitally with the

† University of North Carolina.

R.A.F. Unfortunately, no precise advice could be given since so much depended upon the naval, military and financial plans and commitments of the government. The government, even more ignorant of aviation than the Committee, did nothing. After civil flying had started, a committee under Lord Weir of Eastwood reported on Imperial Air Routes (*Cmd. 449*). They proposed a charter company be established to operate a service from Cairo to Karachi. Considerable government support in the way of free gifts of war surplus materials and the establishment of aerodromes where the R.A.F. felt they were needed, was to be given with additional monies for civil facilities as necessary. But again, no concrete financial details were suggested. However, these were beginning to be available during 1920.

One of the more enterprising of the early enthusiasts for aviation was George Holt Thomas of THE GRAPHIC. Unlike so many other pioneers, he had sufficient capital. Before the First World War he had acquired the license to produce the French Farman aeroplanes in England. During the conflict he manufactured non-rigid airships at one plant and aeroplanes designed by Geoffrey de Havilland (DH) at his Aircraft Manufacturing Company. In 1916 he moved a step further and founded a subsidiary, Aircraft Transport and Travel, Ltd., commonly known as A.T. & T. Because of the war, this company was unable to start operations until late 1918, when it began a service to Belgium with R.A.F. aircraft flown by service pilots. Along the side of the cockpit was painted, "Aircraft Transport and Travel, Ltd., Folkestone-Ghent parcels service;" otherwise the machines bore normal R.A.F. markings. This unusual situation, the details of which have never been made public, was regularized in the summer of 1919 when international flying was allowed after the Allies had agreed to the International Convention for Aerial Navigation.

On 25 August 1919 Handley Page Transport joined A.T. & T. to inaugurate British civil air services to the Continent. It, too, was an offshoot of an aircraft manufacturing concern. (In addition, H.P.T. was involved with the Aircraft Disposals Company's war-surplus activities.) Both companies operated to Paris and the Lowlands and were staffed with enthusiastic personnel and a large and uncommercial collection of aircraft. Both soon found themselves in severe financial difficulties. Since the Handley Page records are not available and A.T. & T.'s were burned in a World War II German raid on Birmingham, we know little of their finances. This is not to say we know nothing at all.

In April 1920 General W. Sefton Brancker, who with General Festing ran A.T. & T., lectured before the Royal Aeronautical Society in London.[1] Though he did not reveal what his company's operating figures were, he did indicate that their ground costs, excluding insurance but including costs on the French side, amounted to about £45,000 per year. An exami-

[1] Brancker, *Aerial Transport from a Business Point of View*, XXIV, No. 114 J. of the Royal Aeronautical Soc'y, 294-312 (1920). Table A is a paraphrase of Brancker's presentation with my notes and percentages indicated by editorial brackets.

Some idea of the increased capital cost of running an airline today may be gathered from the fact that a used Douglas DC-3, a 1936 design, cost £19,000 (c. $54,000 in 1959), while a new Fokker-Fairchild Friendship as supplied to Piedmont Airlines as a replacement for the DC-3 costs about $735,000. The DH 34 cost £10,000, the Armstrong-Whitworth Argosy of 1926-35 £33,000, and the Short Empire flying-boats of 1936-45 £59,000 plus. These increased costs had a direct effect on the capital necessary. Brancker proposed £140,000 in 1920. By 1939 this had risen to £10,000,000, for B.O.A.C. with its world-wide commitments and need for more than 50 four-engined aircraft.

nation of the following table (Table A) indicates that his figures for a hypothetical company were probably about what A.T. & T. was actually operating on, but without having fourteen identical aircraft, which for these figures were to have been DH 18's. In other words, the proposals Brancker presented were probably the ones upon which the future of A.T. & T. was based.

TABLE A

Brancker
June 1920

Cost of London-Paris Air Service

14 aeroplanes, including reserves & spares at £6,500 each	£91,000	
Spare engines	£10,000	
Other spares	£20,000	
Transport, tools, etc.	£9,000	
Working capital	£10,000	
Total	£140,000	
Each of the 14 aeroplanes utilized 300 hours per year with six trips each way daily scheduled between London and Paris. With an average of 280 flying days per year, this equals 1,680 trips or 4,200 hours.		
Fuel for 4,200 hours at £5 per hour	£21,000	[14%]
Depreciation at 50% including obsolescence	£45,500	[31%]
Insurance at 20% [of value of the aircraft]	£18,200	[12%]
Pilots' bonus at 10/—per hour	£2,100	
Total	£86,800	
Total Charges (admittedly on high side) without interest on capital, per year	£131,800	
with 10% interest on capital, per year	£145,800	[100%]
Cost per trip with one ton of freight at 100 m.p.h. over 250 miles	£78.10.0d	
At £15.15.0d each for a full load of passengers, per year revenue	£211,680	
At 2/—per pound of freight at full load of one ton, per year revenue	£376,320	
For a mixed load, say, per year, or £175 per trip with full load.	£300,000	

The above revenue figures presume a full load, or 6,720 passengers per year and 840 tons of goods. Admittedly impossible. Breakeven point per trip is 2.8 passengers and 784 pounds of freight, or 9 passengers and 2,500 pounds of freight a day.

[N.B. In 1924 Imperial Airways estimated a London-Paris service of 1,484 trips with 8,122 passengers on a load factor of 4 persons in the 8 passenger DH 34. This was then expected to produce a revenue of £39,049. In 1922/23 Handley Page Transport had a revenue on this route of £33,971 for only two-thirds the mileage, subsidy excluded.] [The above table is a paraphrase from the materials presented to the Royal Aeronautical Society.]

Brancker's figures when compared on a percentage basis with those of Imperial Airways for its world-wide operations in the period 1932-37 (for which see Table F below), show that his fuel estimates were lower, but he was operating single-engined aircraft. His depreciation figure is

extremely high at 31%, but he was amortizing the aircraft in two years, whereas later custom was to take four or five. Brancker's practice however was not out of line with war-time experience where the erosion of aircraft was 60% per month due to enemy action, lack of training, and flying accidents. In addition the "crates" A.T. & T. was using were not as durable as later machines specially built for commercial use. Moreover, insurance costs were very high in the early days owing to lack of actuarial materials and the inexperience with air transport of all concerned.

Some interesting comments on Brancker's operational ideas appeared two years later when Col. Frank Searle also spoke to the Royal Aeronautical Society. Searle had been the guiding hand of the London General Omnibus Company and then of Daimler Hire, the *deluxe* English car rental agency. When the Birmingham Small Arms (B.S.A.) group, which owned the Daimler motor car company, bought Holt Thomas's Aircraft Manufacturing Company, it sent Searle to investigate and then to manage A.T. & T. He told the Society that in the Fall of 1920 he found the airline had some twenty-five aircraft, of which scarcely two were identical, valued at £50,000.[2] In addition an order had been placed for £60,000 worth of DH 18's. The latter was a brand-new type properly conceived as a civil airliner and intended as a replacement for all the old war-surplus material. Brancker was outraged when Searle cancelled the order for these machines, which were, after all, necessary. But, as Searle quite properly noted, Brancker could if he wanted junk the twenty-five relics (and certainly do away with some of the miniature Air Ministry running them), but he could not as cavalierly erase the £50,000 from the books.[3]

The Instone Airline was almost an accidental creation. The firm of S. Instone and Company ran collieries and owned and chartered ships to take their coal to France. In 1918-1919 they found that the mails were

[2] *Types of Aircraft in Use by British Air Transport Companies, 1919-1924.*

Type	*Aircraft Transport and Travel*	*Handley Page Transport*	*The Instone Air Line*	*Daimler Airway*	*Grand Total*
DH 4	4	2	1		7
DH 9	9	8			17
DH 16	8				8
DH 18	3 (to Instone)	1	5	1	6
DH 34			4 (one to-)	6	9
HP 0/400		10			10
HP 0/10		8			8
HP 0/11		5			5
HP W8		1			1
HP W8b		3			3
Bristol Fighter		2			2
Bristol 10-seater		1			1
Bristol Tourer			1		1
Vickers Vimy Commercial			1		1
Vickers Vulcan			3 (2 returned to V's)		3
B.A.T. FK26			1		1
Westland Limousine			2		2
Supermarine Sea Eagle		2 (British Marine Air Navigation Co.)			2
18 types	24/4 types	41/10 types	18/8 types	7/2 types	87

N.B. Not all of the aircraft registered by Handley Page Transport were used for airline service. The DH 18's were owned by the Air Ministry and shuffled around amongst the lines, which is why the right-hand totals do not agree with some horizontal totals.

Source: Lists compiled by L. T. Mason of the Air Registration Board of London for use in my book *Britain's Imperial Air Routes, 1918-1939*, (Hamden, Conn., 1961).

[3] Searle, *The Requirements and Difficulties of Air Transport*, XXVI, No. 133 J. of the Royal Aeronautical Soc'y, 3-22 (1922).

so slow that they were paying excessive demurrage charges because their colliers arrived in France before the necessary papers. To rectify this situation they obtained a DH 4a and pilot from the Air Ministry. Soon they expanded their service and began to carry passengers and freight. It was only in the last year of operations that the airline side of the business was registered as a private company. No records have so far come to light, so no financial figures are available except those reported for subsidiary purposes. According to these, despite a government subsidy of £44,100 for the year 9 March 1921-31 March 1922, the Instone Air Line lost £5,398.[4] But what Sir Samuel Instone pointed out at one of the Air Conferences was no doubt true, that not one of the companies would have shown a profit if proper allowances for depreciation, etc., were made.[5]

In the fall of 1920 the first of three Air Conferences was held in London.[6] The initial meeting is of particular interest because its Report contains the estimates of H. White-Smith, who had been on the 1918 C.A.T. Committee, for a London-Paris air service with six identical aircraft of each of the twelve types then available for civil use. These figures (given in Table B below) were not applicable to the airlines of that moment for not one of them operated a matched set of planes. But White-Smith's prognostications may be compared with the actual operational accounts of the Daimler Airway (see Tables C and D below) which did own six identical aircraft for the two years 1922-1924. Though the original table contained twelve types, for simplicity only those types which went into regular airline operation are included here. Of these, the DH 9 was converted from a two-seat day-bomber, the Handley Page 0/400 was a late model heavy bomber, the Vickers Vimy Commercial was the basic heavy bomber with a large plywood monocoque fuselage. Only the DH 18 and the Handley Page W8 were initiated as commercial designs.

[4] Sykes, From Many Angles 294, (London, 1943).
[5] *Cmd. 1157*, 21-23.
[6] Reported verbatim in *Cmd. 1157*. The other two Conferences are covered by *Cmd. 1619* and *Cmd. 1848*.

TABLE B

Mr. H. White-Smith's estimates for operation of a London-Paris Air Service with six machines of known makes, October 1920. [Percentages added by author.]

Item	*DH 9*		*DH 18*		*HP 0/400*		*Vimy*		*HP W8*		
Horsepower	240 h.p		450 h.p.		2/350 h.p.		2/350 h.p.		2/450 h.p.		
	£		£		£		£		£		
Cost of airframe	500s		4,500		2,800s		6,800		9,000		
Cost of engines	350s		2,000		3,200s		3,200s		4,000		
Total per a/c	850s		6,500		6,000s		10,000		13,000		
Total for 6 a/c	5,100		39,000		36,000		60,000		78,000		
Spare engines	700		4,000		6,400		6,400		8,000		
Spares at 25% value of a/c	1,275		9,750		9,000		15,000		19,500		
Aerodrome transport	2,000		2,000		2,000		2,000		2,000		
Machinery & plant at terminal	2,000		2,000		3,000		3,000		3,000		
Working capital (two months' running costs)	8,940		15,540		21,165		24,635		27,820		
Total capital outlay	£20,015		£72,290		£77,565		£111,035		£138,320		
General Charges	18,160	32.7%	18,160	18 %	20,500	15.3%	20,500	12.9%	20,500	11.5%	
Maintenance labour	6,680	12 %	6,680	6.7%	12,750	9.4%	12,750	8 %	12,750	7 %	
Spares at 25% (also above)	1,275	2.7%	9,750	9.8%	9,000	6.6%	15,000	9.4%	19,500	10.8%	
Pilots at £1 per hour plus retainer	6,800	12.2%	6,800	6.8%	6,800	5 %	6,800	4.2%	6,800	5.8%	(3.76% &
Co-pilot at 10/—plus retainer	---- ---		----------		3,800	2.9%	3,800	2.4%	3,800	5.8%	2.10%)
Petrol and oil at 4/—a gallon	17,500	31.5%	28,500	28.5%	54,120	40 %	54,120	34 %	57,000	31.5%	
Insurance at 15%	765	1.4%	5,850	5.8%	5,400	4 %	9,000	5.7%	11,700	6.5%	
Depreciation: 3000 hours for engines, 2000 hours for airframes	2,200	3.9%	17,500	17.5%	14,800	10.1%	26,000	19.3%	35,000	19.3%	
Interest on capital, 10%	2,001	3.6%	7,229	7.2%	7,756	5.7%	11,103	7 %	13,832	7.6%	
Total operating costs	£55,381	100.0%	£100,469	£100.0%	£134,746	100.0%	£158,893	100.0%	£180,702	100.0%	
A/c capacity											
passengers or	2		8		10		12		14		
freight (lbs)	500		2,000		1,800		2,240		3,600		

Source: *Cmd. 1157* s denotes war surplus price. a/c denotes *aircraft* (aeroplanes).
It is British practice to quote price without engines and, often, without radio equipment.
All percentages rounded to one decimal place.

TABLE B

Cmd. 1157 (cont.)

General Charges explained.

Item	*Single-engine*	*Twin-engine*
Chief Pilot or Traffic Manager	£600	same
Navigation Controller	500	"
Business Manager & Accountant	500	"
Foreign aerodrome manager	500	"
2 Customs clerks	400	"
2 Typists (home)	300	"
2 Typists (abroad)	200	"
2 Accounting clerks	450	"
1 General Clerk	150	"
	£3,600	£3,600
Advertising	5,000	5,000
Rent at Terminal	1,500	2,500
Transport for maintenance works	1,000	1,000
Insurance of buildings and men	100	180
Insurance of 8 pilots	160	320
Depreciation of plant at 10%	200	300
Office expenses	600	600
Contingencies, including salvage of aircraft, etc.	2,000	3,000
Administrative expenses	1,000	4,000
Grand Total	£18,160	£20,500

In the *Table B* the most significant percentage figures are those which show the contrast between war-surplus aeroplanes and those designed for commercial service. Thus it is seen that the operating costs for the DH 18 are considerably better than for the DH 9 with but one quarter the capacity. There is a steady progressive improvement from the bober-conversion HP 0/400 to the HP W8 commercial design with the commercialized Vimy bomber a fairly good runner up. Insurance and depreciation both increase more rapidly for the commercial designs owing to greater initial cost, but this is compensated for by the greater efficiency and longevity of these designs. Such a comparative study as this was not readily available in the interwar years owing to natural business secrecy and reluctance to see what might be detrimental comparisons, but is today becoming increasingly common.

In the above table the contrast between the cost of operating the DH 9 and the DH 18 is noteworthy. Despite the fact that the price of the DH 18 was six times the DH 9 and the capital outlay three-and-a-half times as much, the operating cost was slightly less than doubled while the capacity was quadrupled. The DH 34 cost about £10,000 maximum. The Daimler Airway was able to hire-purchase these machines, it is true, but nevertheless it operated with only four to six of them and made a good showing with an original capital of only £30,000.

Before comparing White-Smith's estimates with our control, the Daimler Airway, whose monthly accounts survive, something must be said about government aid to the airlines.

Despite stress laid by advisory bodies on the importance of governmental assistance to both the airline and the aircraft industry, in the first two post-war years the British government took the attitude that

the airlines must fly by themselves.[7] The French, however, heavily subsidized their operators in the interests of national defense. The result was that French fare-cutting forced the virtual cessation of all British airline operations, while the British government maintained facilities for French operators! The crisis was reached in February-March 1921. Winston Churchill, then Secretary of State for Colonies and Air, appointed the emergency Cross-Channel Subsidies Committee. This body immediately recommended a "temporary scheme" to aid Handley Page Transport and the Instone Air Line (A.T. & T. was then being liquidated.) to get back in the air. Each company was to be granted £25,000 for operations from March through October. The scheme was subsequently extended to the end of March 1922[8] with an additional grant of £19,100 for each company. In other words, the government was forced to do virtually what the Weir Committee (*Cmd. 770*) had recommended in April 1920. While the "temporary scheme" was in force, the Air Ministry asked for other operators' proposals. In September 1921 the Ministry approved those submitted by the Daimler Airway. Thus the "permanent scheme" provided for operations by three British companies.

Under the "permanent scheme" the Air Ministry not only paid a subsidy on the basis of 25% of gross revenues for carriage of passengers, freight and mails, but also supplied 50% of the total fleet on a hire-purchase basis and paid half of the premiums for insurance up to 10% of the value of the material. If net profits, including subsidies, exceeded 15% of the total subscribed cash capital, then the balance in excess was to be refunded to the Air Ministry until the whole of the subsidy was repaid. In practice, of course, this latter provision proved utterly unreal. It should also be noted that the Air Ministry made at this time no attempt to divide up the routes, but allowed all three companies to compete on the lucrative London-Paris run. This, as the Hambling Committee of 1923 (*Cmd. 1811*) so correctly pointed out, meant that the Air Ministry was competing against itself as well as against the French.

Since the above arrangement did not prove satisfactory, in the fall of 1922 a "revised scheme" came into operation. This required the lines to fulfill certain minimum operating conditions, introducing fines for nonfulfillment. It also provided for the free gift to the companies of all the material purchased for them by the Air Ministry up to 31 March 1923. In addition, the routes were redistributed so that Handley Page monopolized London-Paris, Instone's London-Brussels-Cologne, and Daimler Manchester-London-Amsterdam-Berlin. But before the companies were allowed to gain full experience with this arrangement, the Hambling Committee met and the government decided on a new program.

The final cost of the subsidies' schemes to the cessation of competitive operations on 31 March 1924, including financial aid to the De Havilland Air Taxi service for experimental air mail operations in the United

[7] Winston Churchill in introducing the Air Estimates on 3 March 1920 referred briefly to the civil airlines in this respect and the sentence became one of the key dictums of British aviation policy. (See 126 *H. C. Debs., 5 s.*, 1622, (11 March 1920).)

[8] The original agreement was *Cmd. 1521;* the scheme is summarized in *Cmd. 1811,* one of the essential documents of British aeronautical history.

Kingdom, was £313,824.[9] Thus, despite the Churchillian dictum that the airlines would have to fly by themselves, the government did have to boost the airlines into the black.

The Daimler Airway was established by Col. Frank Searle of Daimler Hire and Maj. George Woods Humphery, who had managed Handley Page Transport in its early days and was by training an engineer and by experience a pilot. Unable to raise the £30,000 capital they considered necessary from private individuals, they persuaded the Daimler Company to advance the necessary funds. It proved to be a good investment, for not only did Daimler get its money back in 1924, but, according to Mr. Woods Humphery, it made in all a 50% return on its investment.[10]

The Daimler Airway was Searle's chance to put into airline practice ideas he had acquired in the adolescent omnibus business. The result was that this company had an influence far beyond its short two-year career. It was assumed that the company could not afford to operate with a large number of idle machines and personnel. Searle stipulated that every aircraft must fly 1,000 hours a year to earn its keep. (Woods Humphery raised this to 2,000 for Imperial Airways.) Every operation was carefully analysed and personnel was cut to the minimum. One of the immediate and most important results of this scrutiny was that Daimler began to fly a round trip with the same aircraft every day on the London-Paris run, and later this was doubled. Heretofore a 'plane was flown over to Paris one day and back to London the next. With this system of intensive usage, Daimler never used more than four aircraft. (When Woods Humphery managed Imperial Airways (1924-1938), he was frequently short of aircraft, but the company just could not afford to keep a number of £30,000-£60,000 machines in hangars around the world in case of emergency. It was not until just before the creation of B.O.A.C. in 1939 that risk capital became available in large enough amounts to allow contemplation of such a luxury.) If Daimler flew its aircraft hard, it also

[9] *Subsidies to British Airlines, 1921-1924, in pounds sterling.*

	1921-22	1922-23	1923-24	1924-25
Daimler	—	39,304	54,936	1,854
Handley Page	37,150	34,169	20,822	2,331
Instone's	38,475	45,818	32,363	2,578
British Marine Air Navigation	—	—	3,846	178
Total of above	75,625	119,291	111,967	6,941
DH. Plymouth-Belfast mail	—	—	1,672	50
Cost of aircraft for above except DeHavilland (DH).		62,461	2,566	

These figures include the final payments made in settlement after audit of the books in 1924.

In the first five years of operations, the five British companies received a total of £378,851 in subsidies and gifts of which £65,027 was in equipment. Not included in these figures are those applicable to the De Havilland Taxi service amounting to £1,722. Although there were five major companies from 1919 to 1924, Aircraft Transport and Travel died before receiving any Government aid.

The total subsidies to each of the four remaining companies amounted to:

Daimler Airway	£ 96,094
Handley Page Transport	£ 94,472
The Instone Air Line	£119,234
British Marine Air Navigation Co.	£ 4,024
Total	£313,824

Source: 204 *H. C. Deb.* 5 *s.*, 1429 (31 March 1927).

[10] Conversations and correspondence with Mr. Woods-Humphrey, who has hyphenated his name since becoming a resident of the United States.

employed its pilots with equal vigor, but paid them well, too. A typical Daimler day would show this sort of distribution of its DH 34's: G-EBBX London-Amsterdam, G-EBBY Amsterdam-London, G-EBBS Manchester-London, G-EBBQ London-Cologne. The company did not go in for freight on the Berlin route because it claimed that it could not afford to be unable to handle passengers, while the subsidy actually made it a paying proposition to operate without any passengers at all on this long-haul introduced in 1923.

A study of the monthly passengers-carried figures for Daimler indicates that the business was seasonal to such an extent that it varied between a total of 640 passengers in August 1923 down to less than ten in January 1924. The periodic fluctuations are reflected in the reasoning of both Brancker in 1920 and Woods Humphery and Searle in 1924. The causes for this were not only the usual vacation and holiday impulses, but that during the summer months many Americans visiting Europe flew the cross-Channel services for the experience. This held true down to 1929.

This periodic change is not unique with these early British lines. Starting in 1958 Pan-American World Airways and National Airlines made use of varying patterns of seasonal vacation-seekers to economize on the use of jets. National leases Pan-American equipment for its Florida services during the off-season on North Atlantic travel.

Of the seven aircraft which at one time or another carried Daimler registration four crashed and three survived to be turned over to Imperial Airways on 1 April 1924, and one of these crashed the following December. Of the original seven, four were on loan from the Air Council and were part of the free gift of the "revised scheme."

TABLE C

Daimler Airway monthly profit and loss account in pounds sterling.

Month	*1922-23*	*1923-24*
April	-4651-16s	202- 3s
May	-4043-13s	-46-11s
June	-7869-18s	-152-16s
July	-2722-12s	-556- 4s
August	-2073-12s	19
September	-1996- 2s	-149- 5s
October	542- 5s	-555- 7s
November	322-17s	331- 5s
December	939-13s	-1670- 2s
January	610	203-15s
February	45-15s	1363-16s
March	593-15s	3990-18s

Fiscal 1922-23 resulted in a net loss of £20,303-7s for the year.
Fiscal 1923-24 showed a net profit for the year of £2,980-12s.

These figures allowed for depreciation and a ten percent profit, so the net operating loss of £17,322-15s for the two years is not quite a true picture of Daimler finances.

TABLE D

Daimler Airway's annual receipts and expenditures for the company's own fiscal year, 1 November 1922 - 31 October 1923. During this period the company operated no more than six DH 34's and generally only four.

*Annual Costs***		*Receipts*	
Stores consumed	£17,545-12s	Passengers	£8,509- 2s
Wages	6,524-11s	Freight & mail	2,078-14s
Salaries	4,122	Government aid*	60,106- 2s
Pilots' bonuses	2,640-11s	Miscellaneous	565- 2s
Advertising	5,007-14s	Total receipts	£71,539.
Car Hire	2,799-12s		
Insurance	9,354- 9s		
Interest to Daimler Hire, Ltd.	2,871-19s		
Bad debts	537-17s		
Profit for year	7,171- 3s		
Total of all costs	£71,539.		

*This item included £651-3s for the repair of engines received from the Air Ministry.

**See *Table F* for percentages.

Source for *Table C* and *D:* Monthly accounts of the Daimler Airway kindly lent by the Secretary, Daimler Hire, Ltd., London. (A microfilm copy is now in the Baker Library, Harvard University.)

Comparison of the Daimler finances with those of earlier companies reveals the difficulties confronting the earlier operators. Not only were they faced with insufficient data, but they were too often militarily-minded in their assessments of what was needed. It is an old Service custom to order considerably in excess of one's needs in order to be sure of obtaining enough. Until the early nineteen thirties, risk capital was just not interested in airlines, let alone willing to squander money on them. Thus the Daimler operation prospered for two reasons apart from its natural efficiency; it was small in concept and it obtained its capital from a large parent corporation, not itself engaged in manufacturing aeroplanes which it expected its subsidiary to purchase. Thus it was free to buy the most suitable machines. Next to Daimler, the Instone Air Line had the soundest base. It was managed by the colliery-shipping company run by the family and obtained its capital from that outfit. Both Handley Page Transport and Aircraft Transport and Travel suffered from being subsidiaries of other aircraft businesses.

The nearest comparable aircraft in the *Cmd. 1157* estimates to Daimler's DH 34's was the DH 18, its elder sister. Both aircraft were designed for commercial service by Geoffrey de Havilland of jet-engined Comet fame. The DH 34 cost £10,000 while the DH 18 was priced at £6,500. The operating budget of the Daimler Airway was £71,539 including an allowed 10% profit for the parent company, while that for the DH 18 was £100,469. The capital costs are not quite comparable for Daimler received three of its aircraft as free gifts from the Air Ministry (one was always owned by the company) after they had only been partially paid for. Nevertheless, the £30,000 capital was considerably less than the £72,290 for the DH 18, though this was probably due to the hire-purchase scheme in force in 1921-22.

Almost as soon as he became Air Minister in the new Conservative government in the Fall of 1922, Sir Samuel Hoare appointed a committee under Sir Herbert Hambling to advise him on an airlines program.

Their Report (*Cmd. 1811*) is one of the landmarks of British air transport history. After carefully reviewing the history of government-airline relations, the Committee recommended drastic changes. Primarily it was concerned that the hand-to-mouth schemes be abandoned in favor of a million-pound monopoly company with a guaranteed subsidy for ten years. The reasoning behind this proposal, which was made by businessmen and not by airmen, was that the only way to attract private capital and at the same time give Britain a proper and stable airline organization was to provide that security of position and subsidy which would allow for planning and development to enable the company to fly by itself at the end of the stipulated period. The committee also made it plain that the proposed monopoly should be operated as a purely commercial enterprise, hoping that the regular payment of dividends would draw in share capital for future development.

The government accepted these proposals and asked for tenders. The Instone family submitted one plan and the other three companies (Handley Page Transport, the Daimler Airway, and the recently-formed British Marine Air Navigation Company) another. In the end the Instones were forced to join the others and in December 1923 the Air Ministry and the British Foreign and Colonial Corporation signed an agreement for an Imperial air transport company (*Cmd. 2010*).

The arrangements made by the British Foreign and Colonial Corporation bore fruit with the creation of Imperial Airways, Ltd., in March. It was managed by Col. Searle and Mr. Woods Humphery, though Searle left after clashing with Sir Eric Geddes, the Chairman. For fourteen of its fifteen and a half years the company was in the hands of "WH." The older companies were bought out by means of cash payments and shares in the new company.[11]

A document survives from the pre-operating days of Imperial Airways which gives a good idea of how the company planned its operations and what it cost the older companies for theirs.[12] Sticking to the London-Paris figurings, we find that the new company estimated 1,484 single trips per year divided as follows:

> 162 trips with 648 passengers in the winter months of November through February,
> 458 trips with 2,290 passengers in the intermediate months of September, October, March and April,
> 864 trips in the summer with 5,184 passengers.

It was estimated that this would amount to 326,480 miles a year at 3/2.31d per service mile for a cost of £52,115. Revenue was expected to amount to only £39,049; therefore, the subsidy for this route had to be £13,066. Estimated revenue was figured as 8,122 passengers at £5 apiece totalling £40,610, less agents commission of 10% (£4,061) and

[11] The four older companies received a total of £148,750 in cash and paid-up shares in Imperial Airways as follows:

Handley Page	£51,500 (£17,166 and 34,334 shares)
Instones	£46,000 (£15,333 and 30,677 shares)
Daimler	£30,000 (£10,000 and 20,000 shares)
B.M.A.N.C.	£21,250 (£ 7,083 and 14,167 shares)

[12] Since all the estimates were based on the use of DH 34's and the schedules from which these figures were taken came from Daimler Hire, it is presumed that this document was the work of Searle and Woods Humphrey in March 1924.
See Tables E and F.

car hire of £2,500. However, it was expected that £5,000 would accrue from freight and excess baggage charges; thus bringing the total revenue to the £39,049 figure given above.

TABLE E

Schedule 22. Estimated costs, mileage, and receipts for 1924 with actual workings of the companies, 1922-1923.

	Paris	*Cologne*	*Hamburg-Berlin*	*Channel Islands Flying*	*TOTAL*
old mileage	207,920	268,258	63,733	(14.8.23-30.11.23)	539,911
new mileage	326,480	345,960	170,269	103,490	946,199
old cost	£59,447	£54,911	£13,572		£127,930
proposed	£52,115	£55,223	£27,179	£16,519	£151,036
Total net receipts					
old	£33,971	£19,042	£ 1,269		£54,282
estimated	£39,049	£32,470	£ 2,032	£ 3,364	£76,915
Net passenger receipts					
previous	£30,055	£11,148	£ 1,269		£42,472
estimated	£34,049	£14,470	£ 2,032	3,364	£53,915
Freight Receipts					
previous	£ 3,916	£ 7,370	negligible	unknown	£11,286
estimated	£ 5,000	£18,000			£23,000

Note 1. The Budget of £159,268 is based on 1,000,000 service miles. The above routes account for 946,199 miles at a cost of £151,036. The balance of mileage to be allocated to routes according to needs.

Note 2. Insurance provided for at rate of 3d per mile on 1,000,000 miles — £12,500. It may be advisable to increase this to 4d to build up a reserve in the early years.

Note 3. An allowance has been made in the Budget for petrol and oil for use of the HP W8's on 200,000 miles. No addition has been made for extra maintenance. [see services estimates]

Note 4. Dead mileage is taken at 3% of service mileage; 30,000 miles at 1/5 1/2d cost per mile (excluding petrol, oil, maintenance and absolescence already provided for). Therefore take £2,131 from the estimated surplus.

On the other routes to be operated, the company figured that the London-Cologne route would cost £55,223 a year for 610 trips with 3,050 passengers necessitating a subsidy of £22,753. The London-Amsterdam-Hamburg-Berlin line was expected to carry only 640 passengers in 253 trips and to require a subsidy of £25,147 a year to offset operating costs of £27,179. (No wonder Daimler said that it really did not matter too much whether they carried passengers or not on this run.) The Channel Islands service was only run from August to November 1923, but on the results of these operations it was predicted that revenues would be only £3,364 versus operating expenses of £16,519, calling for a subsidy of £13,155.

For operating from London to Paris, Basle and Zurich, to Brussels and Cologne, and to Amsterdam, Hamburg and Berlin Imperial Airways was

to receive a subsidy of £137,000 per year. In 1928 it was sensibly decided that competition in Europe with surface transport was too great for profitable unsubsidized operations, and the main emphasis was shifted to Empire routes. In 1936 British Airways came into being as a rival subsidized company in Europe. However not all of the routes there were, for reasons never satisfactorily explained, turned over to this company. B.O.A.C. was created in 1939 and had not yet taken over when war nationalized both lines. Since 1946 Continental routes have been the sphere of British European Airways operations.

Perhaps the most important point in early airline operation, well made by the Daimler management, was that both personnel and equipment must be utilized to the maximum. At the same time emphasis was placed upon standardization. When the same management took over Imperial Airways it had the opportunity to extend its practice. This resulted in the establishment by 1937 of a fairly standard distribution of costs between the various items of expenditure for operations. These figures have been used as a control. Table G places them against the percentages of Daimler Airways' operations for 1922-23, Instones' prognastications for 1924-5, and Imperial Airways' own plans for 1924-5. In the latter case, the management had the advantage of access to the operating figures of all the British lines and was able to effect some economies by a new centralization of maintenance and staff. By the end of 1937 the annuation of pilots and the increasing costs of modern equipment had caused some adjustment in the original percentages. More tellingly, the Air Ministry turned the company's efficiency against it in drawing up contracts for the carriage of mail and for subsidies. Nevertheless, Imperial Airways averaged dividends of 4½% for the sixteen years of its existence.

TABLE F

Control percentages.

Imperial Airways percentage distribution of costs based on five years of operations from 1932 through 1937 in comparison with the same percentages taken from Daimler Airway accounts for the year 1 November 1922 - 31 October 1923. These figures should be compared with the percentages inserted in Tables A and B. Imperial Airways' 1924 plans covered only existing European routes. In the case of these two airlines, they both operated relatively homogeneous fleets. Daimler's consisted almost exclusively of DH 34's, while of Imperial Airways' fleet during the five-year period, the majority of the aircraft were fitted with the same engines, obsolescent aircraft were used for development work, and centralization of operations at London and Cairo considerably reduced overhead. It should also be borne in mind that the company operated over routes from London to Australia with approximately the same route mileage in Europe as that operated by the pre-1924 companies. During the period in question, Imperial Airways received an average of 32% of its revenue from government subsidies. During the year under consideration for Daimler Airways the subsidy amounted to 83% of the revenue received. The Instone Air Line submitted proposals in May 1923 for a £1,000,000 operating company which would be granted monopoly privileges by the Air Ministry. The Instone estimates provided in the first year for maintenance of the existing services in Europe. Therefore their figures for the first year may be taken to reflect fairly accurately their operating experience, both as airline and shipping people.

Item	*Daimler Airway*	*Instone 1923*	*Imperial 1924*	*Airways 1932-37*
Salaries and wages	18.4%	12.5%	15%	22%
Fuel and oil	24.5	21.6	21	18
Materials used on maintenance & repairs		7.2	23	7
Replacement of flying stock and equipment [Depreciation]	7	14.4	11	14
Rents, subcontracted services and insurance	13	4.6	12.7	17
Advertising	6.9	4	5	4
Ground transportation of passengers and their accommodation	3.9	1.6	[5]?	6
Agents' commissions	U/K	1.6	U/K	2
United Kingdom income tax	N/A?	N/A?	N/A?	1
Development expenditure	U/K	U/K	U/K	2
Dividends	10 (profit)		21.5	2
General Reserves	U/K	U/K	2.8	5

Technical efficiency may be judged from the changing ratios of fuel and oil to other costs. The 3% drop in this item is significant because operational aircraft increased in size and number of engines. In this respect it should be noted that the real technical breakthrough came in the early nineteen thirties with the introduction of constant-speed propellers, retractable undercarriages and the abandonment of the biplane configuration. Conversely, though the size of the crew remained unchanged, except on long-distance flights, in the inter-war years, increasing experience and service called for higher pay scales. By 1937 Imperial Airways had recognized this to the extent of introducing new pay rates for incoming aircrew. This had much the same effect in 1937-38 as the disputes over jet-age crewing have had in America.

The cost of insurance declined relatively over the years, but the increased cost of new models generally negated the savings. This had its effect on depreciation, too. The £10,000 DH 34 had to be replaced with the £33,000 Argosy, and ten years later the Ensigns for European service cost £53,000 apiece.

When the relative ignorance of the pioneers is taken into account, it appears marvelous that their "guesstimates" of revenues and expenses were not farther off the mark. The Instone accounts might well reveal them to have been just as astute businessmen as the Searle-Woods Humphery combination at Daimler, but the Instone Air Line never operated so well with so few machines. Handley Page Transport's operations will probably always remain an enigma for its affairs were complicated by association with world-wide ambitions and the war-surplus business. A. T. & T. is known to have been liquidated for reasons beyond its control, but its early operations were admittedly in the red. Even Imperial Airways with £1,000,000 capital at its disposal only received a truly commercial aircraft when the Handley Page Heracles HP 42/43 class were delivered in 1931.

The significance of this is seen in the figures for load factors in the

period 1919-24 in contrast with those of Imperial Airways, 1924-1940. In the first instance 31,870 passengers were carried for a load factor of 59%, while in the latter 575,900 were carried for a 67.7% factor.[13]

The early British Cross-Channel airlines were in many ways like the pioneer steamship operators; they were in the field of the future; but they were ahead of technology. Not only the French and their subsidies, the British government's self-supporting laissez-faire policy, but also economic factors themselves were against unsupported success. Even Daimler was able to show only a respectable profit owing to heavy financial aid from the government.

Speed has always cost money. Up to about 1928-30 several of the most influential people in British aeronautical circles thought in terms of making civil aviation self-supporting through the development of efficient 100 m.p.h. aircraft which would provide a just sufficient advantage in speed to make the airline an effective competitor with the railroads. Hence the interest in large rigid airships with their low maximum speed. The breakthrough of the early nineteen thirties and then the revolution created by the gas turbine were impelled by pressagentry and prestigial powers. These have made such speed appear mandatory that no airline which is forced to succumb to the mania will fly without a tax-assisted take-off. Therefore, our hats may be taken off to the British pioneers who tried to make air travel a reasonable form of transportation.[14]

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[13] Masefield, *Some Economic Factors in Air Transport Operation*, J. of the Institute of Transport 79-108 (1951).

[14] The late Eric Birkhead and I talked in London in the summer of 1959 of the articles we were then writing on this topic. His "The Financial Failure of British Air Transport Companies, 1919-1924" appeared in IV, J. of Transport History, 133-145 (May 1960). Mine was unavoidably delayed by publishing difficulties and is presented as complimentary to his work which was cut short by an unexpectedly early death.

SOME AVAILABLE TRAFFIC FORECASTS AND THE POTENTIAL DEMAND FOR COMMERCIAL SUPERSONIC AIRCRAFT*

RODERICK HEITMEYER†

INTRODUCTION

THIS paper is the result of an attempt to consolidate some of the data and material made available to IATA relating to traffic forecasts and to the estimated potential demand for commercial supersonic aircraft. The object is to provide the 1961 IATA Supersonic Symposium with certain background material in summary form. It must be emphasized that it is not intended to present IATA forecasts or estimates.

Examination of the available studies reveals considerable difference of opinion as expressed in final figures. Traffic forecasts vary considerably, as do the estimates of potential demand for supersonic aircraft; even the years selected for particular attention are not always the same. While this tends to complicate the task of consolidating the data, it is to some extent simplified by the similarity of much of the reasoning and assumptions on which these forecasts are based.

At the outset, it must be stated that forecasting traffic and the potential demand for a particular type of aircraft ten or fifteen years ahead is not a simple matter. Nor is it believed can there be any certainty as to the reliability of the results. Most recent studies are therefore understandably hesitant about making positive statements, and contain numerous qualifications. In view of the preliminary state of knowledge on supersonic aircraft and associated parameters, the qualifications and assumptions on which forecasts are based must be made clear. This is all the more true in view of the many differences of opinion held. However, this paper attempts to cut through to the substance material and does not incorporate all of the many assumptions in the belief that it would thereby become unnecessarily lengthy.

Traffic forecasts on which estimates of the numbers of aircraft required are based, have concentrated on passenger traffic. Very simply, the normal procedure has usually been to estimate passenger traffic in terms of scheduled miles flown, with reference to either total traffic, international traffic or domestic traffic. Next, distinction is made between total traffic and that likely to be available to supersonic aircraft. This involves considerations of minimum stage lengths likely to be flown by these aircraft. Stage lengths of, for instance, 1,800, 1,500 and 1,000 statute miles have been selected, with allowances made for changes in their percentage share of total traffic. It is on the basis of forecasts of traffic over and above certain minimum stage lengths that estimates of the number of aircraft required have been calculated. Involved are estimates of annual aircraft

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productivity. These are based on assumptions mainly as to utilisation, block speed, seating capacity and average load factor.

I. Forecasts of Available Traffic

General Trends Affecting Traffic Development

Before going into details of actual traffic forecasts, a general outline of anticipated trends and assumptions as to conditions affecting the air transport industry in the nineteen sixties and early nineteen seventies is relevant. It is well known that the development of air transport is influenced by a large number of factors. Their influence has extended over the post-war years, in varying degrees.

One of the more significant factors in the recent development of air transport is the cost to the consumer; further reductions in air fares and substantial extensions of cheaper fares are expected in many parts of the world. ICAO has stated that the average price of air transport was maintained at about 6 U. S. cents per passenger mile in the 1951-1959 period. The fact that it was maintained at roughly this level in the face of inflationary trends averaging 2%-3% per year had the stimulating effect of similar price reductions of 2%-3%. ICAO has allowed for a 1% to 2% inflationary trend in airline costs and for the continued operation of older but largely depreciated aircraft in many parts of the world. ICAO consequently has assumed that the unit price of air transport will decline by about 20% by 1967.

The introduction of cheaper fare classes and special creative fares (e.g. family plan, excursion, off-peak, etc.) significantly added to the increased demand for air transport. The growing importance of economy or coach type services is generally accepted. They have become an important part of the total market on many routes. On the North Atlantic, an important potential area for supersonic aircraft, more than 80% of scheduled traffic already moves by economy class. This trend toward greater shares of total traffic is considered to have resulted from a general shift in emphasis by the carriers. Thus, although supersonic aircraft may, for a limited time, operate exclusively first class services, it is held that they must be capable of operating cheaper class services economically. Any future passenger aircraft, including supersonic, must be able to operate in a coach market.

Indirectly at least, the importance of the tourism element in air travel is not overlooked. Its share of world air traffic is growing steadily. The opening up of new areas to international air travel since World War II by the removal of political and economic restrictions has also been a factor in the expansion of air transport. Adverse as well as favorable changes are expected in the next ten years, but the net effect on the overall rate of expansion is expectd to be positive. World population is expected to expand steadily at about 2% per annum and the general level of prosperity is also expected to rise. The possibility of minor recessions is taken into consideration. Major recessions are not ruled out entirely, but have been excluded from traffic forecasts.

Changes in the quality of service offered in the air and on the ground also are considered to have had a definite bearing on the expansion of air transport. Improvements in the speed, safety and reliability of air transport have contributed toward its rapid development and this trend is

expected to continue. The capacity available to the scheduled airlines will increase rapidly in the 1960-1962 period, with deliveries of new aircraft. It is believed that this may lead to expanded traffic in the early nineteen sixties by encouraging the airlines to reduce fares and rates to tap new markets. The increased availability of convenient space is also expected to play a part. ICAO anticipates that traffic will reach and possibly surpass the supply of capacity in the 1963-1967 period. This is based on the implication that additional aircraft may be ordered, but not in sufficient numbers so as to affect the expansion of the industry as a whole. Indeed, it must be mentioned that many new orders have already been placed for delivery in this period.

Governments are considered to have greatly assisted air transport development in the past through the provision of airports and other ground services at less than cost, through the granting of direct and indirect subsidies, and so on. Protective attitudes over traffic rights in some instances may have retarded its rate of expansion. However, it has been said that governments have encouraged air transport so far as possible, consistent with orderly development and the interest of their own airlines. Operating rights also have been extended. It is assumed that these favorable attitudes will continue, provided problems such as excessive noise in the neighborhood of airports can be dealt with satisfactorily. It is moreover expected that governments will not increase airport and route facility charges to an extent likely to impair the rate of expansion of air transport as a whole. A reversal of this expectation, with repercussions on fare levels would adversely affect development.

No changes are anticipated in the competition from other means of transport in the next decade that are likely to affect air transport on a world-wide scale.

Forecasts of World Traffic

We now turn to general forecasts of total scheduled passenger traffic. This obviously constitutes more than is likely to be available to supersonic aircraft. Only one recent set of estimates of this traffic, prepared by ICAO, was made available. For purposes of comparison, traffic forecasts made several years ago are brought into the picture and included in TABLE 1 below. This will afford the opportunity of comparing previous estimates of 1960 traffic with the actual preliminary ICAO figure for 1960. Differences among the various figures for 1960 and among estimates for later years will be noted. It is important to mention here that references to world traffic in this paper relate to the world comprising ICAO Member States and specifically exclude traffic of the People's Republic of China and the USSR.

TABLE 1

Forecasts of World Traffic (Passenger Miles—Millions)*

	Boeing[1]	*Canadair*[2]	*Convair*[3]	*Douglas*[4]	*TP. Wright*[5]	*ICAO*[6]
1960	72,600	67,800	67,000	63,800	70,000	69,000[7]
1965	145,400	105,300	110,200	87,500	115,000	100,000[8]
1967	—	—	—	—	—	118,000
1970	235,900	147,200	156,400	—	—	137,000
1973	—	—	—	—	—	155,000

* "World" refers to ICAO Member States, with the major exclusions of People's Republic of China and the USSR.

[1] Boeing—1958.
[2] Canadair—1956.
[3] Convair—1957.
[4] Douglas—1957.
[5] T. P. Wright (Cornell Univ.).
[6] ICAO—June 1960.
[7] Preliminary ICAO figure.
[8] ICAO graph.

Historically, the trend in world air transport has been one of steady expansion with a progressive falling off in the rate of growth. Total passenger miles increased by 92% in the years 1949-1953, but only by 56% in the 1955-59 period. In making its forecast ICAO has assumed that a direct continuation of the decline in the rate of growth would produce an increase in traffic in the order of 50% in the 1959-1967 period (30% in the first four years, 15% in the second). This is provided the world "price" per passenger mile is to continue to remain almost constant, with general world prices rising 10% to 15% in the period. But the stimulating effect of reductions in the price of air transport, in association with abundant capacity, would result in an increase in passenger miles flown equal to twice the price reduction. Since the assumption is that there will be a 20% reduction in price in the 1959-1967 period, it is calculated that in the same period the volume of air transport will increase by about 100% (50% owing to assumed growth with price constant, plus 40% resulting from 20% price reduction). In this way, the ICAO figure of 59 million passenger miles for 1959 becomes 118 million in 1967. After 1967 it is anticipated that the decline in the rate of expansion will have stopped and that world passenger traffic will be increasing at a steady rate of 5% per annum. Passenger traffic is expected to reach 137,000 million passenger miles in 1970 and 155,000 million in 1973.

World International and Domestic Traffic

International air traffic volume has tended to increase more rapidly than domestic air traffic and this trend is expected to continue as reflected in traffic forecasts. However, the only available forecasts of total, as opposed to long-range, international and domestic traffic are once again those produced by ICAO. These are given in TABLE 2. A study produced by United Research Inc.,* relating to the traffic of U. S. flag carriers only, assumes that their international traffic will increase by 15% per year in the 1960-1965 period; 12% in the 1965-1970 period; and 10% from 1970-1975. It also assumes that the share of U.S. carriers in total international traffic will remain at around the current level. This implies similar growth rates for total international traffic. These increases have been applied to the 1959 world figure and the resulting

* The United Research Inc. Study was commissioned by the FAA.

data is produced in TABLE 2. This Table also contains forecasts of U. S. domestic traffic for comparison with the ICAO estimates of total world domestic traffic. The extensive share of U.S. domestic traffic will be seen.

TABLE 2

Forecasts of
International and Domestic Passenger Traffic Volume (passenger miles-millions)

	International		*Domestic*	
	ICAO	*United Research*[1]	*World: ICAO*	*U.S.: United Research*[2]
1959	20,000[3]	20,000[3]	39,000[3]	28,100[4]
1965	—	46,300	—	42,000
1967	47,000	58,000	71,000	—
1970	56,000	81,500	81,000	51,700
1973	68,000	108,500	87,000	—
1975	—	131,300	—	64,200

[1] Derived from United Research estimates of U.S. carriers' international traffic which were based on an annual growth rate of 15% p.a. until 1965; 12% p.a. from 1965-1970; and 10% p.a. from 1970-1975; on indicated assumption that U.S. carriers' share of total international traffic will remain approximately the same.
[2] United Research: Derived from updating of Curtis Report.
[3] 1959 ICAO figures.
[4] 1959 ATA figure—actual.

Total U. S. International and Domestic Traffic

In view of the market potential for supersonic aircraft amongst U.S. carriers, prepared by United Research Inc., are produced below in TABLE 3. Forecasts are in terms of passenger miles and seat miles. Additional data on the U.S. market is given in TABLE 9, prepared by Convair.

TABLE 3

Forecast of Passenger Traffic for Major
U.S. Scheduled Airlines—1960-1975 (in thousand millions)

	REVENUE PASSENGER MILES			*AVAILABLE SEAT MILES*[3]		
	Domestic[1]	*International*[2]	*Total*	*Domestic*	*International*	*Total*
1960	30.0	8.9	38.9	50.0	14.8	64.8
1965	42.0	17.8	59.8	70.0	29.7	99.7
1970	51.7	31.3	83.0	86.2	52.2	138.4
1975	64.2	50.4	114.6	107.0	84.0	191.0

Source: United Research Inc.

[1] Derived from updating of Curtis Report—actual.
[2] Based on annual growth rate of 15% per year until 1965, 12% per year from 1965 to 1970, and 10% per year from 1970 to 1975.
[3] Based on 60% utilization of seats.

World Long-Stage Traffic

While general conditions in the air transport industry have their importance, a distinction must be made between total traffic and that likely to be available to supersonic aircraft. This involves consideration of stage lengths. Range limits had to be set, but the existence of differences of opinion have affected both estimates of traffic and calculations of the potential market for these aircraft.

With certain qualifications and reservations, three different minimum

stage lengths have been used as a basis for calculations in three recent studies: 1,800 miles by ICAO; 1,500 miles by United Research Inc.; and 1,000 miles by Convair. As to the relative accuracy of these figures, much will depend on the operating characteristics of supersonic aircraft and traffic conditions. Obviously, the lower the minimum range, the larger will be the estimated traffic available and the larger the estimate of the number of aircraft required, given similar aircraft productivity.

An assessment of the relative merits of different minima would take into account the following:

a) The cost and operating characteristics of high-speed aircraft;

b) the advantage of aircraft speed to air passengers which increases directly with distance;

c) the likelihood that the economics of any long-range supersonic aircraft may be such that its direct operating cost per seat miles will continue to decrease as sector lengths increase, and not level off as rapidly as it does in the case of piston and subsonic jet aircraft;

d) the expectation that operating costs will rise steeply as sector lengths fall below 2,000 miles.

Even if operating characteristics are such that it may be uneconomical to operate over stage lengths much less than 2,000 miles, a number of carriers would probably be prepared to include short or medium stage lengths in a long route, if this would enable them to obtain additional traffic. Load factors are extremely important in this connection as higher load factors may compensate for higher operating costs. A trans-atlantic carrier might well add a short sector at the European end of his route for the sake of serving two points with the same service. On a route such as the one from Europe to Australia the pattern of operation will not only be different for each operator, but will probably vary from service to service flown by the same carrier. All operators of supersonic aircraft will attempt to fly over the most economical stage lengths. But these stage lengths will tend to change from day to day so that as many traffic points as possible may be tapped within the limits of traffic rights or bilateral agreements. Occasional short sectors may also be included, again simply to service additional points on the same flight.

This pattern has in many ways been followed with current jet operations where carriers are foresaking short-stage traffic and deliberately seeking intermediate points in order to get better end-to-end timings. The general assumption is that supersonic aircraft cannot be used satisfactorily over very short stages. There will be severe economic penalties for not operating at adequate altitudes, and short stages will mean that these aircraft will spend too much time climbing and coming down. Time savings over more conventional aircraft will be reduced to such an extent as to become negligible, particularly when the time passengers have to spend on the ground is taken into consideration. This also means that the size of these aircraft will tend to be based on the traffic potential available over longer sectors. However much of the potential market for conventional aircraft lies with large domestic operators and their requirements are expected to be taken into account. They will wish them to have an economic range to suit their route structures. This is likely to start at something under the range generally required for international operations.

As indicated, certain sectors below 1,800 or 1,500 miles will probably

have to be included for routing purposes, given suitable aircraft and facilities. Perhaps the absolute minimum practical range will be 1,000 miles. In general, however, operating economics are likely to be such that shorter sectors will be avoided as far as possible. This means that only part of shorter stage traffic will be carried by supersonic aircraft. Even if supersonic aircraft are to operate without too great penalties in the 1,000-1,500 mile area, their share of this total traffic will probably not be extensive. The extent of traffic penetration of supersonic aircraft must be taken into account in setting the floor for purposes of estimating traffic. Competition from subsonic aircraft will tend to increase as stage distances decline. On the longer sectors much will depend on the routes operated and the extent that subsonic jets may be phased out of service on competing sectors. Generally, it has been accepted that on the most suitable longer sectors where time savings can best be realized, supersonic aircraft would have the competitive advantage over their subsonic jet predecessors. Competitive situations similar to those experienced between propeller and jet aircraft are expected to develop. The degree of market penetration is therefore important to estimates of the number of supersonic aircraft that are likely to be required.

Capacity operated and traffic carried over long-haul sectors has been increasing, largely as a result of technological advance in aircraft design and performance. The share of long-haul stages in the international sector is much greater than in the domestic sector. This is illustrated in Table 4 which relates to major United States scheduled airline operations over sectors of 1,500 miles and over, expressed in terms of seat miles and percentages. The U.S. case may not be typical, but it is indicative. Data may be compared with the ICAO data in Table 6. The figures in Table 4 are estimates based on an analysis of the airline schedules published in the Official Airlines Guide. Forecasts for the years 1965, 1970 and 1975 are also included. It will be seen that the percentage share of sectors in total international traffic of U.S. carriers increased from 32.7% in 1947 to 55% in 1958 and is estimated to increase to 60% in 1965; 63% in 1970 and 65% in 1975. In the domestic sector the share is smaller. It increased from 0.9% in 1947 to 15.6% in 1958, and is estimated to increase to 18% in 1965; 20% in 1970; and 22% in 1975.

TABLE 4

Seat-Miles Operated over Long-haul Sectors (1,500 miles and over) by Major U.S. Scheduled Airlines: 1947-1975

	NUMBER (Thousand millions)			*% of total seat Miles for All Sectors*	
Year	*Domestic*	*International*	*Total*	*Domestic*	*International*
1947	0.1	0.9	1.0	0.9	32.7
1952	2.0	2.3	4.3	11.0	47.2
1957	5.7	4.6	10.3	14.2	50.8
1958	6.3	5.6	11.9	15.6	55.0
1965	12.6	17.8	30.4	18.0	60.0
1970	17.2	32.9	50.1	20.0	63.0
1975	23.5	54.6	78.1	22.0	65.0

Sources: United Research Inc.; Official Airline Guide, March 1947, 1952, 1957 and 1958; schedules analysis.

Improvements in speed and the introduction of long-range aircraft have had their impact on air traffic and are largely responsible for the growth in long-stage traffic. The advantage of speed was most apparent on longer journeys and faster aircraft have therefore had the greatest impact on long-haul markets. Greater range made non-stop long-haul flights possible, thus also contributing to shorter journey times. Moreover, as traffic increased, it became possible to serve more and more points on non-stop flights instead of having to pick up traffic at intermediate points in order to maintain economic load factors. A further reason offered as an explanation of the growth of long-stage traffic is that the North Atlantic and other long-stage routes have tended to expand at a faster rate than the short-stage routes.

Finally, Table 5 below contains a number of available forecasts of world long-stage operations extending to 1975. As already mentioned, the limits and years selected vary. In order to bring some of these estimates closer for comparison purposes, data for 1,400 miles and 1,800 miles was compiled from Convair estimates that were broken down by mileage blocks.

TABLE 5

World Long-Stage Operations (millions—passenger miles)

	Convair 1,000 m.	*Convair[1] 1,400 m.*	*Convair[1] 1,800 m.*	*I.C.A.C. 1,800 m.*
1958	26,496	18,977	15,143	—
1959	—	—	—	12,100
1965	51,321	37,831	30,780	—
1967	—	—	—	35,000
1970	71,754	53,889	44,419	44,500
1973	—	—	—	57,000
1975	92,440	69,774	57,497	—

[1] Derived from Convair traffic estimates by mileage blocks.

International Long-Stage Traffic

As indicated in Table 4, the share of long-haul stages in the international sector is much greater than in the domestic sector. For further information on the scheduled international sector we can refer to 1959 ICAO data listing four main stage length groups, contained in Table 6 below:

TABLE 6

Distribution of Traffic Performed on Scheduled International Services in 1959 according to stage lengths

Stage Length Groups (miles)	*Total Passenger Miles (millions)*	*Distribution (percent)*
0 - 299	1969	9.6
300 - 599	2645	12.9
600 -1799	7731	37.7
1800 and over	8161	39.8
Total	20,506	100.0

It will be seen that sectors of 1,800 miles and over accounted for about 40% of the passenger miles flown on international services. This compares with about 34% in 1956. ICAO has assumed that the trend will continue and that these operations will account for 55% of interna-

tional passenger miles by 1967, for subsonic aircraft only. The introduction of supersonic aircraft would, however, tend to increase the percentage suitable for these aircraft.

ICAO is of the opinion that stages of 1,800 miles and over are those that are likely to be of particular interest to long-range supersonic airliners. It recognizes that any long-range aircraft sometimes must be operated over stages shorter than the economic minimum. This points out that the utilization of supersonic aircraft will tend to be greater than might appear from the statistics of traffic on the long stage lengths. Moreover, the very existence of exceptionally fast long-range aircraft would cause airlines to re-arrange this service pattern so as to provide more express services with fewer stops, thus again somewhat increasing the volume of operations on the longer stages. The potential volume of passenger traffic on international services in 1967 suitable for long-range supersonic aircraft was therefore estimated at 60% of the total instead of 55%. This gives a total of 28,000 million passenger miles which they expect will be potentially suitable for supersonic aircraft on international services. The steady increase in the proportion of traffic represented by the operations on stages over 1,800 miles—from 40% in 1959 to 60% in 1967—would be expected to continue less rapidly up to 1970 and 1973, bringing the percentage to about 65% in 1970 and 70% in 1973.

International Long-Stage Traffic: North Atlantic

The North Atlantic route is frequently mentioned as one of the major routes for supersonic operations—certainly the most important as far as international operations are concerned. Moreover, expectations are that in 1970 it will account for 44-60% of international long-stage operations. In 1960 it may be estimated to have amounted to something in the order of 55%. It has been estimated that its share of the world air travel market will be about 20%. In view of its significance in terms of the supersonic market certain available data prepared by ICAO and Convair are presented in Table 7 below.

Variations in the North Atlantic figures provided by Convair and ICAO for 1958 and 1959 may be explained by the fact that these are estimates based on IATA figures which are not compiled in terms of passenger miles.

While both series of estimates begin close enough together it will also be noted that expectations as to development on this route differ. Convair has assumed a yearly growth variation for the period 1959-1975 of 16 to 4%. ICAO is more optimistic.

TABLE 7

Comparison of North Atlantic Traffic with total international long-stage traffic (over 1,800 miles) (passenger miles—millions)

	International Long-Stage	*North Atlantic*		*% North Atlantic*	
	ICAO	*ICAO*	*Convair*	*ICAO*	*Convair*
1958	—	—	4,740	—	—
1959	8,200	4,650	—	56.7	—
1965	—	—	10,712	—	—
1967	28,000	16,000	—	57.1	—
1970	36,500	22,000	16,163	60.3	44.3
1973	48,000	27,000	—	56.3	—
1975	—	—	19,812	—	—

These estimates relate to total traffic and are not concerned with the potential penetration by supersonic aircraft. Convair expects that supersonic aircraft would account for 90% of total North Atlantic passenger miles were they to operate in 1965, 1970 or 1975 (see Table 15).

ICAO estimates of total potential aircraft requirements for the North Atlantic route in 1967 are given in Table 14.

Domestic Long-Stage Traffic

Despite a lack of adequate statistics on other than the U.S. domestic sector, it can be said that the proportion of Traffic carried over long stages on domestic operations is very much lower than is the case with international services. Only the U.S. and Canada among ICAO States have large volume domestic air services. Even allowing for increases in traffic and in non-stop operations by 1967, doubts have been expressed concerning the existence of many other domestic air services in this category. French domestic air services to Africa include a number of such stages, but they are of relatively low frequency and volume. On the basis of published time tables ICAO estimate that long-stage operations, with stage lengths over 1,800 miles, represent 7-8% of total world domestic operations in 1959. Long stage length operating in all other domestic systems where such operations are possible (French Africa, Brazil, India, Australia and some territorial services classed as domestic) might bring the 1959 figure up to 10%.

ICAO suggests that the same figure of 10% should be used in forecasting for 1967, since the scope for the development of long air services into long-stage air services in the domestic field is relatively limited. Moreover, certain territorial services classified in 1959 as domestic operations will, by 1967, have to be placed in the international category, owing to the territories in question having become independent States. Taking 10% of the estimated world total of domestic operations in 1967 gives 7,150 million passenger miles for the traffic on stages over 1,800 miles. In view of the limited number of long-range routes in the domestic sector, the percentage is expected to remain about 10% in 1970 and 1973.

These assumptions made by ICAO concerning percentage shares of traffic over 1,800 miles in the international and domestic sectors produce the following estimates for 1967, 1970 and 1973, with figures of 1959 given for purposes of comparison:

TABLE 8

International and Domestic Traffic on Stages over 1,800 miles (passenger miles—millions)

	1959	1967	1970	1973
International	8,200	28,000	36,500	48,000
Domestic	3,900	7,000	8,000	9,000
Total	12,100	35,000	44,500	57,000

World Traffic by area — Trips over 1,000 Miles

Some statistics on U.S. carriers traffic and North Atlantic traffic have already been given in Tables 3 and 7. Data on these and other world areas are given in a more detailed table (Table 9) prepared by Convair for

the years 1958, 1965, 1970 and 1975, in terms of trips over 1,000 statute miles. This is a breakdown of forecasts appearing in Table 5 above.

TABLE 9

World Air Traffic—Trips over 1,000 statute miles

	Revenue Passenger Miles (thousands)			
Area	*1958*	*1965*	*1970*	*1975*
U.S. Domestic	15,280,978	26,741,711	34,535,010	42,022,690
North Atlantic	4,739,762	10,711,862	16,162,588	19,812,205
U.S.—Caribbean, Latin America	1,844,781	3,505,084	4,685,744	6,216,912
U.S.—Honolulu	844,172	1,618,035	1,927,495	2,343,056
U.S.—Tokyo	478,255	956,510	1,348,679	1,927,368
Honolulu—Tokyo	101,907	203,814	287,378	410,685
U.S. West Coast—Europe	335,000	1,005,000	2,010,000	3,015,000
Honolulu—Oceania	103,655	217,310	306,407	437,880
Europe—South America	292,228	637,057	923,440	1,244,891
Europe—Caribbean	280,093	610,603	855,094	1,193,196
Europe—Africa	366,903	796,180	1,111,716	1,511,640
Europe—Middle East	669,959	1,453,811	2,029,976	2,760,231
Europe—Orient (Polar)	90,000	270,000	540,000	810,000
Middle East—W. Asia	383,151	963,220	1,859,604	3,263,153
Intra W. Asia	72,759	188,446	363,067	632,276
W. Asia—S.E. Asia	201,237	521,204	1,004,173	1,748,750
Intra S.E. Asia	71,515	185,224	356,860	621,465
S.E. Asia—E. Asia	65,674	170,096	327,713	570,707
Intra E. Asia	33,870	87,723	169,011	294,330
Australia—S.E. Asia	108,143	280,090	539,634	939,763
Australia—Africa	5,921	14,506	28,006	49,144
Australia—N. Zealand	70,697	183,105	352,778	614,357
TOTALS	26,495,660	51,320,591	71,754,373	92,439,699

Source: Convair.

On the basis of Table 9, Convair has set out the basic areas, their approximate percentage share of world air passenger traffic and the yearly percentage growth variation in the 1959-1975 period, as follows:

	U.S. domestic	*N. Atlantic*	*U.S. to Orient*	*Rest of Free World*
Approximate percent world market	50%	20%	5%	25%
Yearly growth variation (1959-1975)	12 to 4%	16 to 4%	15 to 5%	17 to 5%

World Long-Stage Traffic (over 1,000 miles) by Mileage Blocks

The distribution of traffic in terms of stage distances has an important bearing on aircraft design-range. Convair has conducted a useful analysis with the compilation of traffic statistics by city pairs, summarized by mileage blocks of 200 miles. This also constitutes a further breakdown of their forecasts appearing in Table 8.

Data for 1958 and 1975 have been extracted and appears in Table

10. The percentage distribution of traffic by mileage block is given, as well as the growth factors for each block, which list the expected growth of traffic for each block in the 1958-1975 period. For ease of reference, it should be emphasized that these are growth factors and not percentage increases (i.e., a factor of 10 represents a tenfold increase and not an increase of 10%). Furthermore, the traffic in the various blocks has come from many different areas of the world, each having its own growth rate.

TABLE 10

World Airline Traffic by Mileage Blocks

Range In Hundreds (St. Miles)	*Revenue Passenger Miles*		*Percent of total*		*Expansion Factor*
	1958 (millions)	*1975 (millions)*	*1958 %*	*1975 %*	*1958-1975*
10-12	5,373	15,377	20.28	16.63	2.86
12-14	2,045	7,320	7.71	7.92	3.58
14-16	1,333	4,238	5.03	4.58	3.18
16-18	2,501	8,009	9.44	8.66	3.20
18-20	1,841	7,135	6.95	7.72	3.88
20-22	1,148	3,567	4.33	3.86	3.11
22-24	658	2,285	2.48	2.48	3.47
24-26	3,869	10,617	14.60	11.49	2.74
26-28	623	1,940	2.35	2.10	3.11
28-30	388	1,879	1.46	2.11	4.84
30-32	314	1,322	1.19	1.43	4.21
32-34	100	413	0.38	0.45	4.13
34-36	1,481	6,612	5.97	7.16	4.18
36-38	1,479	6,192	5.58	6.70	4.19
38-40	1,431	5,965	5.40	6.45	4.17
40-42	99	422	0.37	9.46	4.26
42-44	359	1,492	1.35	1.61	4.16
44-46	159	657	0.60	0.71	4.13
46-48	—	—	—	—	—
48-50	204	869	0.77	0.94	4.26
50-52	559	2,256	2.11	2.44	4.04
52-54	—	—	—	—	—
54-56	335	3,015	1.26	3.26	9.00
Over 56	96	859	0.36	0.93	9.00
TOTALS	26,496	92,440	100.0	100.0	3.49

Source: Convair.

Three points meriting attention are the following:

i) Some of the mileage groups are more important in the traffic picture than others. Convair has pointed out the four major points of traffic concentration which are expected to account for 77% of total passenger miles in 1975:

ii) Traffic above 4,000 statute miles, in 1958, diminishes quite rapidly and accounts for only about 10% of total passenger miles flown over 1,000 mile stages. However, the expansion factors for these ranges in the 1958-1975 period are the highest.

iii) On the basis of this analysis Convair is of the opinion that a supersonic aircraft should have a design range of 4,000 st. miles and the ability to operate at as low a range as economically possible.

TABLE 11

Traffic Density by Mileage Blocks—Major Areas 1975

Rank	*Mileage Segments (St. Miles)*	*Major Market*	*Percentage of Total Pass. Miles*
1	1,000 - 1,400	US Northeast - Florida	24.6%
2	3,400 - 4,000	US - Europe	20.3%
3	1,600 - 2,000	US Midwest - California	16.4%
4	2,400 - 3,000	US Transcontinental	15.7%
		TOTAL	77.0%

Source: Convair.

II. POTENTIAL DEMAND FOR SUPERSONIC AIRCRAFT

The foregoing section provides a statistical background to several forecasts that have been made covering the period up to 1975. This section is devoted to estimates of potential demand for commercial supersonic aircraft.

It will have been noted that there are differences of opinion as to the traffic that will be available to supersonic aircraft. For this reason alone it may be expected that forecasts of numbers of aircraft required will differ. This they do. However, different estimates of aircraft productivity, in terms of seat miles per annum, have combined to accentuate the differences.

Four sets of estimates will be dealt with below—produced by ICAO, Convair, Boeing and United Research Inc., in that order.

Potential Supersonic Requirements—ICAO

Preceding pages and tables have listed ICAO forecasts of traffic. Estimates of potential aircraft demand are based on their estimates of traffic on long stages of over 1,800 miles.

Aircraft considered are 100-seat Mach 3 and Mach 2 types with respective estimated annual productivity of 280 million and 190 million passenger miles, based on the following assumptions:

a) Load Factor: 60%
b) Utilization: 3000 hours per annum
c) Block Speeds: Mach 3 — 1550 mph
Mach 2 — 1025 mph

This produces the estimates listed in Table 12 for the years 1967, 1970 and 1973.

TABLE 12

ICAO Estimates—Number of Aircraft Needed to Accommodate Potential Traffic on all Stages over 1,800 miles: 1967-1970-1973

	1967	*1970*	*1973*
Mach 3 (100-seat)	125	159	202
Mach 2 (100-seat)	188	238	303

For 1967 a breakdown is given between international and domestic sector requirements in Table 13. It will be noted that those for the international sector are far greater.

TABLE 13

Market for Supersonic Airliners (Long-Range)—International and Domestic Sectors—1967

	Mach 3 (100-seat)	*Mach 2 (100-seat)*
International Sector	100	150
Domestic Sector	25	38
TOTAL	125	188

A distribution of supersonic aircraft requirements over major trunk routes was made for 1967 with the results presented in Table 14. Operations on the North Atlantic route are expected to account for almost half of the world requirement in 1967—about 58 Mach 3 aircraft or about 87 Mach 2 aircraft, each of 100 seats. The United States and Canadian transcontinental services would constitute the next important market with about 22 Mach 3 (100-seat) aircraft. It is pointed out that on those routes with low traffic density probably considerable pooling of other forms of cooperation would be required in order to permit the operation of supersonic aircraft.

TABLE 14

Number of Mach 3 (100-seat) Long-Range Airliners Possibly Required on Main Trunk Routes in 1967

	Number of Aircraft		
Routes	*International*	*Domestic*	*Total*
North Atlantic	58		58
Mid and South Atlantic and Polar	7		7
Europe—Mid and Far East—Australia	11		11
Europe—Africa	4	2	6
US and Canada Domestic	—	22	22
North America—South America	7		7
North America—Pacific	9		9
Trans-Europe	2		2
All other	2	1	3
	100	25	125

It must be stressed that the above ICAO estimates are *totals* assuming that *all* suitable routes are to be operated by supersonic aircraft. Spare aircraft are excluded. It is pointed out that purchases would not be expected to approach these figures in the three years mentioned. Table 15 incorporates ICAO estimates of the number of supersonic aircraft that could be absorbed in the particular years 1967, 1970 and 1973 by the annual need for new capacity, assuming no other new aircraft were delivered at the same time. It will be noted that no mention is made of the annual demand in the intervening years (i.e. 1968, 1969, 1971 and 1973). However, further consideration was given to how these estimates would be affected by different assumptions as to size, speed, economic range, operating costs, etc.

TABLE 15

Number of Supersonic Airliners required in 1967, 1970 and 1973 to supply capacity to cover annual expansion and losses

	1967	*1970*	*1973*
Mach 3 (100-seat) a/c	42	49	51
Mach 2 (100-seat) a/c	63	73	76

Potential Supersonic Requirements—Convair

Given forecasts of long-stage traffic, Convair places emphasis on the extent of market penetration by supersonic aircraft; they expect these aircraft to capture markets in a similar way to the jets.

Convair forecasts of total long-stage traffic over 1,000 miles appear above in Tables 5 and 9 to 11. It is further recognized that only a proportion of this traffic will be available to supersonic aircraft. Certain penetration factors are therefore assumed in order to arrive at estimates of the traffic that will be available to supersonic aircraft. The date is set out in Table 16.

TABLE 16

Supersonic Penetration and Traffic Available (Traffic over 1,000 statute miles)

		Traffic Available (RPMs)		
Area	*Percent Penetration*	*1965 (000)*	*1970 (000)*	*1975 (000)*
U.S. Domestic	65%	17,382,112	22,447,757	27,314,749
N. Atlantic	90	9,640,676	14,546,329	17,830,985
U.S.—Orient	75	2,083,769	2,672,664	3,510,832
Rest of Free World	30	3,326,598	5,247,967	7,777,109
Total	—	32,433,155	44,914,717	56,433,675
Percent of World Total	—	63%	63%	61%

On the basis of its anticipated levels of traffic in 1965, 1970 and 1975, Convair has assumed a median range of 2,900 statute miles, and applied the block speed for this range to the various seat configurations (70,100 and 130 seats) at a 65% load factor. No mention of utilization is made. However, it is understood that annual utilization in the order of 3,000 hours was assumed. The resultant productivity was divided into the estimated numbers of revenue passenger miles and the following results were obtained:

TABLE 17

Convair Estimates of the Potential Number of Supersonic Aircraft Required

Mach No.	*70 Passenger Aircraft*	*100 Passenger Aircraft*	*130 Passenger Aircraft*
		1965	
2.0	199	141	108
2.5	171	121	93
3.0	154	109	83
3.5	143	101	77
		1970	
2.0	276	195	149
2.5	237	168	128
3.0	213	150	115
3.5	198	140	107
		1975	
2.0	346	245	187
2.5	298	211	161
3.0	267	189	145
3.5	249	176	135

On the basis of Tables 16 and 17 prepared by Convair it is possible to derive estimates of the potential number of supersonic aircraft that might be required for three areas of interest specified in Table 16, i.e. U.S. domestic; North Atlantic: and U.S. to Orient. Taking at random a Mach 3 100-passenger aircraft with the annual productivity estimated in Table 17 and relating it to the traffic estimates in Table 16 produces the following results:

Potential Demand for Mach 3 100-seat Aircraft

Area	*1965*	*1970*	*1975*
U.S. domestic	55	75	91
North Atlantic	32	49	60
U.S.-Orient	7	9	12

Some of the above data might be compared in a very rough and ready manner with the ICAO data in Table 14 and United Research data in Table 18 below.

Potential Supersonic Requirements—Boeing

A recent Boeing paper confines its attention to the international market as far as forecasts and estimates of demand are concerned. A continued steady growth of air travel is considered necessary to achieve reasonable production runs.

Emphasis is placed on the sonic boom as a limiting factor with respect to traffic forecasts. It is assumed that the sonic boom will limit traffic available to supersonic aircraft by 20% in the area of 1,500-2,000 Nautical Miles and over.

Boeing has made two estimates of international seat miles available for supersonic production by 1972. The first, on the basis of a 15% growth rate, amounts to 225,000 million seat miles; the second, on the basis of a 10% growth rate, amounts to 150,000 million seat miles. This is estimated to be the equivalent of 450 and 300 Mach 3 transports respectively.

Estimates are based on the following main assumptions:

a) 60% load factor
b) 140 passenger capacity
c) 3,000 hours utilization
d) all long-stage traffic over 2,000 n.m., plus some in the 1,500-2,000 mile bracket
e) 20% sonic boom critical factor

It is stated further that a delivery rate of 100 of these aircraft per year starting in 1970 would not catch up demand of the lower (10%) growth rate until about 1975.

Potential U.S. Supersonic Requirements—United Research Inc.

As previously indicated, this particular study is confined to the market amongst major U.S. scheduled carriers for supersonic aircraft. Accordingly, it is estimated that the following numbers of Mach 3 (150-seat) aircraft would be in demand in 1970 and 1975:

TABLE 18

Potential Demand Amongst Major Scheduled U.S. Carriers

	Domestic Flights	*International Flights*	*Total Flights*
1970	25	49	74
1975	35	81	116

Applicable seat miles were calculated by applying the percentages of total seat miles flown over 1,500 miles in Table 4 to the forecast of total seat miles in Table 3. Productivity of a 150-seat Mach 3 aircraft was estimated at 675 million seat miles a year on the basis of 3,000 hour utilization and on average block speed of 1,500 m.p.h.

Conclusion

Throughout this paper different views and assumptions have been outlined. It will have been seen how these differences have culminated in varying estimates of the potential demand for commercial supersonic aircraft. Given these differences, Table 19 is an attempt to bring together some of the estimates of the demand for Mach 2 and Mach 3 aircraft.

TABLE 19

Estimates of the Potential Demand for Mach 2 and Mach 3 Aircraft, 1965-1975

	MACH 2			*MACH 3*					
	ICAO (100-seat) World	*Convair (100-seat) World*	*Convair (130-seat) World*	*ICAO (100-seat) World*	*Convair (100-seat) World*	*Convair (130-seat) World*	*Boeing[1] (140-seat) Intern.*	*ICAO (100-seat) Intern.*	*United Res. (100-seat) U.S.C.*
1965	—	141	108	—	109	83	—	—	—
1967	188	—	—	125	—	—	—	100	—
1970	238	195	149	159	150	115	(a) (b)	—	74
1972	—	—	—	—	—	—	450 300	—	—
1973	303	—	—	202	—	—	—	—	—
1975	—	245	187	—	189	145	—	—	116

[1] Boeing estimates have since been revised.

Variations in each set of estimates are entirely possible if the assumptions on which they are based are changed. The figures will be affected by different assumptions as to such factors as speed, size, economic range, available traffic, load factor, utilization and operating costs.

Finally, one extremely important factor must be mentioned which could impose severe limitations on commercial supersonic operations, thus affecting available traffic and the potential number of supersonic aircraft that may be required. This is the sonic boom. It must be emphasized that only one of these available forecasts has taken the sonic boom into consideration. The remainder, and indeed this paper, must therefore be examined with this in mind.

INTERNATIONAL REVIEW†

I INTERNATIONAL CIVIL AVIATION ORGANIZATION 172

Report of Council Relating to Technical Assistance

Ranking of ICAO Members based on Passenger Miles Performed

II INTERNATIONAL AIR TRANSPORT ASSOCIATION . 173

New rules to govern passenger and cargo agents

Charges Working Group—User Charges for Airports

Group fares on the North Atlantic Route

III WORLD HEALTH ORGANIZATION (WHO) . . . 176

Report of the Committee on International Quarantine, Geneva, November, 1961

IV INTERNATIONAL FEDERATION OF AIR TRAFFIC CONTROLLERS ASSOCIATION (IFATCA) . . . 177

Report of the inaugural meeting, Amsterdam, October, 1961

V INTERNATIONAL ASTRONAUTICAL FEDERATION (IAF) 177

Report of the XII International Astronautical Congress, Washington, D.C., October, 1961

VI INTERNATIONAL CRIMINAL POLICE ORGANIZATION (INTERPOL) 178

General Assembly, Copenhagen, September 1961, Resolution Regarding the Urgent Need for Defining the Legal Powers of Aircraft Commanders.

VII CUSTOMS CO-OPERATION COUNCIL (CCC) . . . 178

Report of the 19th Session, Bruxelles, December, 1961

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I INTERNATIONAL CIVIL AVIATION ORGANIZATION

REPORT OF COUNCIL RELATING TO TECHNICAL ASSISTANCE*

The Organization's work in the field of technical assistance was divided between the Expanded Programme, the Special Fund and the United Nations operation in the Congo.

Under the Expanded Programme, ICAO provided assistance to some fifty States through resident missions, the assignment of experts for periods of from two to four months to give advice or investigate specific problems, and the granting of fellowships for training abroad. There were changes in the composition of several missions, in some instances because the original objectives had been achieved, in others because of changes in emphasis as specific projects came to an end. Some of the States that had been receiving assistance for some time needed less of it, but the reduction in their requirements was more than offset by those of the newly independent States. In Africa alone, more than seventy experts took up new assignments during 1961. A new form of assistance, financed by grants by the Chairman of the Technical Assistance Board from his Contingency Fund, was two seminars on weather forecasting for jet operations, one at Cairo and the other at Nicosia, under the joint auspices of ICAO and the World Meteorological Organization; a third, for South-east Asia, is planned in 1962, to be held in Bangkok.

Under the Special Fund, plans of operation for the civil aviation training centres in Bangkok, Cairo, Casablanca, Mexico City and Tunis and for the national aeronautical laboratory at Bangalore were completed and signed by the three parties concerned—the Fund, the Governments and ICAO—and all but one of the projects got under way. At the year's end a request from Lebanon for assistance in establishing a flight safety centre at Beirut was under consideration by the Fund.

The early part of 1961 saw an improvement in civil aviation services in the Congo resulting from an agreement with the Directorates of Telecommunications and Civil Aviation authorizing ICAO to provide additional staff. Under this agreement the mission was brought up to a strength of between sixty and seventy, which was maintained throughout the year. Even during the extremely difficult period just before and after the tragic death of the Secretary General of the United Nations, Mr. Hammarskjold, the mission was able to provide, almost without interruption, essential ground services at the principal airports. The chief of the mission and an officer from Headquarters represented the United Nations in the investigation of the accident that took Mr. Hammarskjold's life.

RANKING OF ICAO MEMBERS BASED ON PASSENGER MILES PERFORMED

A ranking of the first thirty ICAO member states in the field of passenger traffic was released at International Civil Aviation Organization headquarters on March 12, 1962. This ranking is based upon the number of passenger-kilometres (or passenger-miles) performed by the international and domestic scheduled airlines of the different countries in 1961 (the People's Republic of China, the U.S.S.R. and other states which were not members of ICAO on 31 December 1961 are excluded).

* Only the introductory section is reported herein. The entire report may be obtained from ICAO, Montreal 3, Canada.

The ranking is as follows:

United States of America	1	Argentina	11	Denmark	21
United Kingdom	2	India	12	Israel	22
France	3	Switzerland	13	New Zealand	23
Canada	4	Belgium	14	Ireland	24
Netherlands	5	Mexico	15	Pakistan	25
Australia	6	Sweden	16	Chile	26
Brazil	7	Colombia	17	Czechoslovakia	27
Italy	8	Spain	18	Greece	28
Japan	9	South Africa	19	Venezuela	29
Germany	10	Norway	20	Lebanon	30

(Most of the scheduled services of Denmark, Norway and Sweden are operated by a single company; the total figures for the three countries would place Scandinavia just above Italy.)

The total number of passenger-kilometres performed ranged from 63,105 million for the first-ranking country, the United States of America, to 304 million for the thirtieth ranking country, Lebanon. (From 39,213 million passenger-miles, U.S.A., to 189 million passenger-miles, Lebanon).

Rankings, as well as the detailed country-by-country compilation of international and total scheduled air traffic for 1961 and 1960 are based on preliminary data compiled by ICAO. Later this year more complete traffic data will be contained in ICAO Digest of Statistics No. 90, covering Traffic from 1947 to 1961. Separate ICAO Digests of Statistics, issued yearly or semi-yearly, cover the subjects of Financial Data, Fleet-Personnel, Traffic, and Traffic Flow; Digest No. 90 will be available from the Distribution Officer, International Civil Aviation Organization, Montreal 3, Canada at a price of $3.25 (Canadian) or from ICAO Officers or Sales Agencies in equivalent currencies.

II INTERNATIONAL AIR TRANSPORT ASSOCIATION

NEW RULES TO GOVERN PASSENGER AND CARGO AGENTS

New agency compliance procedures approved by all interested governments, including the U.S. Civil Aeronautics Board, to provide for quicker processing of complaints and violations of the IATA Traffic Conference resolutions which airlines and their agents have agreed to observe, will come into force throughout the world on June 1, 1962. They are designed to ensure fair and uniform treatment of the travelling public and to protect the vast majority of conscientious agents by meting out quick justice to the unscrupulous few who undermine the market by malpractice.

While certain types of serious violations will bring about automatic cancellation, the new procedures do not create new penalties. Decisions reached in the new compliance machinery will be subject to appeal by the agent under the terms of existing arbitration procedures.

The relevant section of the IATA resolution reads as follows:

H. Review of Violations

(1) (a) In the event that a Member shall come into possession of information indicating an agent's violation of an IATA resolution, other than Sections C and G hereof, such Member (hereinafter referred to as "the notifying Member") promptly shall so notify the Secretary of the Traffic Conference area in which the office of the agent is located (hereinafter referred to as "the Conference Secretary"), furnishing in connection therewith all supporting evidence of such violation which may be in its possession.

(b) The Conference Secretary shall review such evidence and, if he deems it

sufficient to warrant his so doing, shall bring a formal written complaint against the agent before an Agency Compliance Committee hereinafter provided for.

(c) If, in the Conference Secretary's opinion such evidence shall be insufficient to warrant submission of a complaint to an Agency Compliance Committee, he shall transmit the notifying Member's notice, together with the supporting evidence furnished therewith, to the Director General for investigation and report by the Chief Enforcement Officer and inform the notifying Member accordingly.

(2) In the event that information of the violation of IATA resolutions by an Agent shall come into the possession of the IATA Enforcement Office, the Chief Enforcement Officer shall submit a report thereof, together with supporting evidence to the Director General for transmittal to the Conference Secretary.

(3) Upon receipt of any report from the Chief Enforcement Officer alleging a violation of an IATA resolution by an Agent, the Conference Secretary shall bring a formal written complaint against the Agent before the Agency Compliance Committee.

(4) The Secretary of the Conference involved shall, when acting pursuant to the terms of Sub-paragraph (1) (b) or Paragraph (3), forward promptly a copy of the complaint to the agent complained against by registered mail (return receipt requested), together with a notice advising the agent of his right to submit a written answer to the complaint within 30 days from the date the complaint is received.

(5) Agency Compliance Committee as required from time to time shall be established in each individual Traffic Conference area. Each Agency Compliance Committee shall consist of three persons to be designated by the Secretary of the respective Traffic Conference areas. Two members of the Committee shall be chosen from a panel maintained by the Conference Secretary consisting of at least one person nominated by each carrier. The third member, who shall act as Chairman of the Committee, shall be chosen from a panel established by the Traffic Conference and shall be a person of legal qualification. Each Agency Compliance Committee shall settle its own procedures and shall reach a decision by majority vote.

(6) The Agency Compliance Committee shall decide on the written evidence before it whether the agent complained of has violated the resolutions alleged and shall report its findings in writing to the Agency Sub-Committee of the Traffic Conference. Should such findings be that the agent has violated an IATA resolution, the Agency Compliance Committee also shall recommend to the Agency Sub-Committee, in writing, a penalty of reprimand, suspension or cancellation of the agent's IATA approval as may be appropriate.

(7) (a) The Agency Sub-Committee is empowered by a two-thirds majority to decrease or increase the penalty recommended by the Agency Compliance Committee, but not to waive the application of a penalty. Should the Agency Sub-Committee fail to impose a penalty, the recommended penalty of the Agency Compliance Committee shall be deemed approved by the Agency Sub-Committee and, subject to Paragraph (10) of this Section, shall become final.

(b) In the event, however, that an Agency Compliance Committee has found that the agent has knowingly and wilfully committed a violation of the following nature, the Agent's IATA approved shall be cancelled by the Conference Secretary upon 35 days' notice:

(i) the unauthorized or improper rebating of fares or charges;

(ii) a material misrepresentation in the agent's applications for reduced fare transportation;

(iii) the unauthorized or improper claiming or retention of additional commission for inclusive tours;

(iv) the unauthorized or improper splitting of commission with persons other than IATA agents;

(v) the soliciting of charter passengers contrary to Resolution 045.

(8) A report of the decision reached by the Agency Compliance Committee, and the action taken thereon by the Agency Sub-Committee, if any, shall be made to the appropriate Conference Secretary who shall transmit copies thereof to each Member of IATA and to the agent.

(9) The Conference Secretary shall distribute to each approved IATA agent (excluding branch offices) a current copy of each resolution listed in Attachment "B" hereto.

(10) Any Agent, the IATA approval of which has been suspended or canceled, as provided above, shall have the right to arbitration in accordance with the procedures set forth in Section C, Paragraph (10) hereof.

(11) Except with respect to the qualifications requirements set forth in Section B, Paragraph (3) as applicable to the review of approved agents, and in Section G, the procedures above provided for shall supersede any other procedures set forth in this resolution relating to the violation of IATA resolutions by sales agents.

(12) Upon cancellation or suspension all Members shall request immediate return by the agent of all unused ticket forms, exchange orders and miscellaneous charges orders, together with all monies due and payable and require a complete and satisfactory accounting to be rendered.

CHARGES WORKING GROUP—USER CHARGES FOR AIRPORTS

The IATA Charges Working Group held a special meeting in Montreal in early April and reported that user charges for airport and en route navigation facilities by individual authorities are causing considerable concern to the airlines. In the last four years charges have increased more than 75% while the traffic has increased by 39%.

Fees are being increased and new types of charges are being levied with little or no notice or consultation and with little regard to the airlines' ability to pay. In some cases the fees are levied on such short notice that the airlines have no time to provide for them in their pricing structure, which is subject to international agreement and cannot be changed overnight.

Airlines have long been accustomed to paying landing fees and other charges as their fair share of airport costs. Some administrations, however, are now working on the principle that the airlines alone must pay all of these costs although the airlines have no control over the operation of these airports. A 35 per cent increase in landing fees at West German airports has already resulted in an increase in domestic German fares and will probably have an impact on international fares to and from that country.

Other areas in which fees have been increased during the last few months are the Bahamas, Greece, Israel, Yugoslavia, Mexico, and Panama.

The question of en route navigation facilities is even more disturbing because it involves charges for flight over the high seas and facilities which have always been provided by governments as part of their general responsibility for order in the air and public safety. Some charges for en route facilities levied by Canada are now being contested in the courts by several airlines, which similar charges are being attempted by government agencies in Malta and parts of South America and Africa.

The Group concluded that some sort of international law and order should be established to regulate the imposition of these charges by airport and government authorities.

GROUP FARES ON THE NORTH ATLANTIC ROUTE

Scheduled international airlines flying the North Atlantic have agreed to offer new low fares for groups of twenty-five or more persons, which will reduce the cost of year-round transport on their regular services by as much as 186 dollars. The agreement was reached by mail ballot of members of the IATA Traffic Con-

ferences, including eighteen airlines directly engaged in the North Atlantic passenger trade and others whose services parallel or are affected by them.

This new group fare of $300 is equal to a 58% reduction from the 1951 fare and is even more significant in view of the fact that today's jets are a great improvement in terms of speed and comfort over the services of a decade ago. It is hoped that, as in previous instances, this reduction and additional advantage of the frequency and flexibility of regular scheduled services will result in sizeable increases in North Atlantic traffic and in particular, will help to develop a large new market among Europeans who wish to visit North America.

The groups eligible may be made up of twenty-five or more persons having a definite affinity as members of an existing organization or who assemble spontaneously. Group bookings can be made through travel agents, although agents may not create the groups or solicit membership. In the case of "affinity" groups, members of the party must have belonged to the organization concerned for at least six months before their travel commences; and in all cases, members of the immediate family and parents living in the same household may be members of the group. Groups will be required to travel together on the same flights for their entire itinerary; group travel reservations will have to be made 30 days in advance.

III WORLD HEALTH ORGANIZATION (WHO)

REPORT OF THE COMMITTEE ON INTERNATIONAL QUARANTINE, GENEVA, NOVEMBER, 1961

The Committee on International Quarantine met in Geneva, November 6-11, 1961. The items of interest on the Agenda were:

Items: 4. Annual review of the working of the International Sanitary Regulations.
6. Disinsection of aircraft.
7. Pure water at international airports.
9. Review of trends in quarantinable diseases.
10. International protection against malaria.

Item 4 It was reported that the new Health part of the aircraft general declaration was proving satisfactory in most States. Complaints were made concerning lack of observance of the rules relating to vaccination certificates. This appeared to apply mainly to passengers on the smaller, non-scheduled aircraft.

Item 6 A new insecticide DDVP was reported to be proving excellent for killing insects; but experiments are still being made to determine whether it is likely to have unacceptable effects on the eyes of the aircrews. It was suggested that the International Sanitary Regulations should be amended to make "blocks away" disinsecting compulsory, and evidence was given of aircraft arriving in a State with living insects inside. However, the suggestion was not adopted. The meeting urged further research, and stressed the value of bilateral agreements between health authorities so that additional disinsection on arrival could be eliminated.

Item 7 Complaints were made of many airports at which pure drinking water is unobtainable. The Committee recommended that WHO investigate further.

Item 9 The Committee noted how air travel facilitates the transmission of quarantinable diseases, and that the increase in air travel made tracing suspect cases difficult. The tendency to abolish passenger lists was questioned, but it was pointed out that airlines would co-operate with health authorities and would be able to trace passengers by using their records of ticket issuance.

Item 10 It was agreed that a special meeting should be held to discuss protection against malaria, at which meeting aircraft disinsecting procedures would receive attention.

IV INTERNATIONAL FEDERATION OF AIR TRAFFIC CONTROLLERS ASSOCIATION (IFATCA)

REPORT OF THE INAUGURAL MEETING, AMSTERDAM, OCTOBER, 1961

The inaugural meeting of the Association took place in Amsterdam on October 20, 1961. The prime object of the meeting was to ratify a "Convention of the International Federation of Air Traffic Controllers' Association." This Convention has been drawn up as a result of correspondence between Air Traffic Controllers Associations in certain States. It had been intended to call it "European," but expressions of interest from countries outside Europe persuaded the Associations responsible to change this to "International." The meeting was attended by representations of member Associations in 12 European States, and by observers from 5 States, one from outside Europe. ICAO, IATA, IFALPA and EUROCONTROL were also represented.

In the course of discussion of the text of the Convention, it was noted that some "associations combine their technical professional objects with those of a trade union or staff association." Since, on the other hand, some "national associations have a purely technical character," it was decided to limit the aims of the IFATCA by inserting an amendment in the Preamble of the text ". . . a world-wide professional federation, which is based on the principle of co-operation on technical professional matters, excluding matters which are the prime objects of trade unions or staff associations." It was stated at the meeting that "it is indispensable that this basic principle is clearly expressed in the Constitution of the Federation."

Among the objects of the Federation are "to promote safety, efficiency and regularity of International Air Navigation, . . . to assist and advise in the development of safe and orderly systems of air traffic control," and "to make mutual benefit affiliations with other international professional organizations." Among the means to be adopted is "to closely co-operate with national and international aviation authorities and other institutions or persons concerned with air navigation."

Any air traffic controllers' association "whose purposes are essentially the same as those of the Federation" may apply to become an "affiliated member of the Federation." All national members of an affiliated association shall be considered simultaneously as individual members of the Federation. A Director is to be nominated by each affiliate to attend meetings of the Federation on its behalf. He may have advisors and a deputy.

There is to be an Annual Conference; and a Special Conference can be convened by a majority of the Directors. The following officers will be elected—a President, two Vice-Presidents, a Secretary, a Treasurer and an Editor. Among the activities of the Secretary is to maintain a permanent record of the Federation's policy and activity. The Headquarters of the Federation is at Cologne/Bonn airport.

The Federation attaches some importance to the publication of its official journal, which is authorized by the Convention. It is to be published in English.

V INTERNATIONAL ASTRONAUTICAL FEDERATION (IAF)

REPORT OF THE XII INTERNATIONAL ASTRONAUTICAL CONGRESS, WASHINGTON, D.C., OCTOBER, 1961

The XIIth International Astronautical Congress was held in Washington, D.C. October 1-7, 1961. Legal and technical sessions were held simultaneously. There was a wide range of technical subjects covered, including landing guidance for

satellites and ballistic-type vehicles, and high performance combustion systems.

Legal problems were discussed under the auspices of the International Institute of Space Law and dealt *inter alia* with the boundary line between air space and outer space, and with civil liability for damage caused by space vehicles on the earth, to other space vehicles and to aircraft. It was generally agreed that there was a need for fixing the upper limit airspace by an international convention. A special study group which includes one of the ICAO officials, acting in a personal capacity, was established by the International Academy of Astronautics to study and make a report on the subject after taking into account the legal, technical, political and other considerations relevant for the determination of that limit. Regarding civil liability in relation to spacecraft it was emphasized that precedents established by international air law conventions might be followed in many respects.

VI INTERNATIONAL CRIMINAL POLICE ORGANIZATION (INTERPOL)

GENERAL ASSEMBLY, COPENHAGEN, SEPTEMBER, 1961 RESOLUTION REGARDING THE URGENT NEED FOR DEFINING THE LEGAL POWERS OF AIRCRAFT COMMANDERS

The General Assembly took place in Copenhagen, September 4-9, 1961. During the session a Sub-committee on air police problems convened and discussed as its main topic the powers of aircraft commanders. The question of their powers arose in connection with "hi-jacking," and theft of valuable goods on the ground at airports and during transit to and from airports. Finally the General Assembly adopted a resolution drawing "the attention of international bodies and national authorities to the urgent need for defining the legal powers of aircraft commanders and suggesting that the preliminary draft of the Legal Committee of ICAO be studied, and all appropriate measures be quickly taken by countries."

VII CUSTOMS CO-OPERATION COUNCIL (CCC)

REPORT OF THE 19TH SESSION, BRUXELLES, DECEMBER, 1961

The 19th Session of the Customs Co-operation Council was held in Bruxelles, December 5-7, 1961. The Permanent Technical Committee of the Council had, at a meeting in September 1961, considered Recommendation B-5 of the 5th Session of the FAL Division. The Recommendation dealt with simplification of inward and outward clearance of air cargo. In its consideration the committee kept in mind the long-range objective of an international standard document for customs clearance of air cargo. The Technical Committee decided that as a first step it would collect information from States on current clearance procedures and have these submitted to a 1962 session of the Committee, to which representatives of the interested international organizations should be invited.

CURRENT LEGISLATION AND DECISIONS

Aerial Crop Spraying — Inherently Dangerous Activity — Non-delegable Duty — Theories of Liability

During 1961, three cases involving liability for damages caused by aerial crop spraying reached the supreme courts of three different states. The theories employed by the courts in arriving at the decisions present an interesting contrast in two areas. These are (1) the liability of a landowner for the conduct of the sprayer, and (2) the theories of liability for the damages caused. The purpose of this note is to point up the distinguishing features of the cases and to compare them to past decisions.

In one case defendant landowner employed the defendant aerial spraying company to rid the former's property of weeds. The herbicide spray spread to the plaintiff's cotton crops causing substantial damage. The trial court found that the spraying operations had been conducted negligently and that the landowner was liable along with the aerial sprayer. The Texas Court of Civil Appeals affirmed. *Held: judgment against landowner reversed.* Under the facts of this case, the aerial sprayer is an independent contractor to whom the risk of harm may be delegated, thereby absolving the landowner from liability for such operations. *Pitchfork Land & Cattle Co. v. King*, 346 S.W.2d 598 (Tex. Sup. Ct. 1961).

The second case involved damage to the seed crops of the plaintiff which were sprayed by the defendant aerial applicator. The plaintiff based his claim on a theory of trespass. The trial court granted an involuntary nonsuit to the defendant landowner because the other defendant was an independent contractor. At the close of evidence the aerial sprayer was given a directed verdict. *Held: reversed and remanded as to both defendants.* The aerial sprayer is strictly liable for damages caused by his spraying without regard to any negligent acts committed by him. The landowner is also liable because aerial spraying is an inherently dangerous activity and he is not permitted to insulate himself from a suit for damages by hiring an independent contractor. *Loe v. Lenhardt*, 362 P.2d 312 (Ore. Sup. Ct. 1961).

In the third case the plaintiff was covered with poisonous chemical insecticides sprayed from an aircraft as he worked on a gin platform contiguous to a cotton field being treated for insect pests. He became seriously ill and later sued the aerial sprayer, the lessee of the land and the owner lessor basing his suit on a negligence theory. *Held: the sprayer and the lessee are liable.* The lessee of the premises, whose crops were being treated, may not delegate the work of dusting or spraying a crop with poisonous insecticides to an independent contractor and thus avoid liability. *Lawler v. Skelton*, 130 So.2d 565 (Miss. Sup. Ct. 1961).

The holdings in the *Loe* and *Lawler* cases are more nearly in accord with the great weight of authority on the issue of a landowner's liability for injuries caused by an aerial sprayer.[1] The common-law rule that an

[1] See, *e.g.*, McKennon v. Jones, 224 S.W.2d 138 (Ark. 1951); Heeb v. Prysock, 245 S.W.2d 577 (Ark. 1952); S. A. Gerrard Co. v. Fricker, 27 P.2d 678 (Ariz. 1933).

employer is not liable for the torts of an independent contractor hired by him has been limited somewhat by the so-called "intrinsically dangerous" exception.[2] If the activity is of such a nature that it involves a high degree of risk to others, the duty not to harm which is owed to these persons is said to be non-delegable.

The courts in almost every jurisdiction in which the point has been considered have held that aerial spraying or dusting is an "intrinsically dangerous" activity. Accordingly they have uniformly decided that an employer cannot escape liability for damage caused by drifting herbicides or insecticides by hiring an independent contractor to do the work.[3] However, most of the cases deciding the issue have involved damage caused to persons, property or animals located within close proximity of the spraying operations.[4] Dean Prosser suggests that the "intrinsically dangerous" exception may not apply in those cases where there is not a high degree of risk in relation to the immediate surroundings.[5] The blasting case cited by him in support of that proposition certainly seems analogous to the spraying operations, particularly in view of the frequent comparisons of the two activities made by the courts.[6] In *Holt v. Texas-N.M. Pipeline Co.*[7] the Fifth Circuit Court of Appeals held that an employer was not liable for the injuries caused to a third party incident to blasting operations carried on by an independent contractor in barren rural areas. The court stated that such work under these conditions was not even intrinsically dangerous.[8]

In the *Pitchfork* case the closest cotton farm to the area being treated was some seven and a half miles distant.[9] On the other hand, in the *Lawler* case the plaintiff informed the lessee defendant that he would be working on the platform at a distance of twenty to thirty feet from the cotton field.[10] Clearly the risk to the plaintiff was great in view of the toxic qualities of the insecticide and the proximity of the platform to the field. The courts do not discuss the point in any of these cases, but it seems particularly applicable to a determination of whether crop spraying is in fact an inherently dangerous activity.[11]

The holding in the *Pitchfork* case is not actually as broad as it might first appear. It does not stand for the proposition that all inherently dangerous activities may be delegated to an independent contractor under Texas law. Many cases have held that the duty incident to these activities is non-delegable.[12] Nor does it state that crop spraying is not inherently dangerous. The decision in this case is undoubtedly the result of plaintiffs' failure to submit and prove their issue on dangerous instrumentali-

[2] Prosser, Torts 359-61 (2d ed. 1955).
[3] See cases *supra* note 1.
[4] For an extensive list of these cases see Comment, 40 Texas L. Rev. 527, n. 47 (1962).
[5] Prosser, Torts 361 (2d ed. 1955).
[6] See, *e.g.*, Loe v. Lenhardt, 362 P.2d 312 (Ore. 1961).
[7] 145 F.2d 862 (5th Cir.), *cert. den.* 325 U.S. 879 (1945).
[8] 145 F.2d at 863.
[9] 346 S.W.2d at 599.
[10] 130 So.2d at 567.
[11] In the *Loe* case the court weighs the proximity factor to determine whether the activity was extra-hazardous for purposes of strict liability, but does not discuss it in relation to the problem of non-delegable duty. 362 P.2d at 317.
[12] See, *e.g.*, Galveston-Houston Electric Ry. Co. v. Reinle, 258 S.W. 803, 805 (Tex. 1924).

ties.[13] Hence, *Pitchfork* is precedent, at most, for the proposition that in Texas crop spraying is not extremely dangerous as a matter of law. Upon this basis the case does not present too radical a departure from other decisions in this area.

The second point of interest raised by these three cases involves the theory of liability upon which the plaintiffs recover. The jury in the Texas trial court made specific findings of negligence which supported the judgment against the aerial sprayer.[14] It seems unlikely that the Texas courts would permit a recovery in the absence of such findings.[15] There are many cases from other jurisdictions which also couch the basis of recovery in negligence terms.

In the *Loe* case, the Oregon Supreme Court concluded that the defendants were liable for an unintentional trespass committed by them through their drifting spray. The court expressly stated that negligence is not necessary for recovery under the facts. It held that aerial spraying was an inherently dangerous activity, that this was a question of law to be determined by the court and that the rules of the Restatement of Torts relating to innocent trespass applied.

The *Lawler* case presents still another aspect of this question. The jury in the trial court found for the defendants in spite of the overwhelming evidence showing negligence which proximately caused plaintiff's injuries. The court stated that "the issue of liability contains two factors, (1) whether plaintiff was sprayed by [the aerial applicator] with a chemical mixture, and (2) whether the spraying was a proximate cause of his acute illness."[16] The court mentioned acts committed by the pilot which could be constitute negligence,[17] but it was concerned primarily with the question of proximate cause. Hence this case seems to fall somewhere between the doctrine followed by the Texas court and that adopted by the Oregon court.

The several comments which have been written on this subject all seem to agree that there are three classes of cases dealing with aerial spraying.[18] The first is exemplified by the Texas case in which the court relies upon specific acts of negligence to find liability; the second is represented by the *Lawler* case from Mississippi where the court seems to decide that merely spraying under the particular circumstances is negligence; the third is that of strict liability. There have been only two cases decided on this basis, and *Loe* is the first to employ the Restatement

[13] Brief for appellant, pp. 33-35, Pitchfork Land and Cattle Co. v. King, 355 S.W.2d 624 (Tex. Civ. App. 1961).

[14] 335 S.W.2d 624 (Tex. Civ. App. 1961). The grounds were failure to confine the herbicide outside the boundary of the cotton crops in question, failure to use a wind gauge to check the velocity and direction of the wind, failure to properly mix the materials, failure to discover within a reasonable time after beginning the spraying that the velocity of the wind would cause the spray to drift and settle on the cotton, and that the wind was blowing over ten miles per hour on the occasion of the spraying. *Id.* at 629.

[15] Texas purports not to recognize a doctrine of strict liability. The leading case on the point is Turner v. Big Lake Oil Co., 97 S.W.2d 221 (Tex. 1936). See also Vrazel v. Bieri, 294 S.W.2d 148 (Tex. Civ. App. 1956) where the court refused to impose liability in the absence of any finding of unreasonable action on the part of the defendant crop duster. The court said that it would not consider the spraying negligence per se because to do so would be to impose strict liability upon the defendant.

[16] 130 So.2d at 569.

[17] *Id* at 567 (turning on the spray directly over the platform).

[18] See Note, 43 Minn. L. Rev. 531 (1959); Crop Dusting: Legal Problems in a New Industry, 6 Stan. L. Rev. 69 (1953); Comment, 40 Texas L. Rev. 527 (1962).

doctrine.[19] At least one writer has suggested that this is the most appropriate theory for recovery particularly in view of the potential harm.[20]

These cases continue to come up through the courts of almost every state in which there is substantial agricultural activity. The benefits from crop dusting or spraying in the form of insect and weed control are undoubted. However these benefits must be weighed against the dangerous characteristics of herbicides and insecticides and against the damage which they can cause if not properly controlled. The theories of liability will probably continue to be divergent in the various jurisdictions, but this is certainly not a characteristic unique to this particular field of tort law.

Charles Ted Raines, Jr.

Air Carriers — Tortious Conduct — Actual and Exemplary Damages Awarded "Bumped Passenger" — C.A.B. Penalty Agreement

Plaintiff sued defendant airline charging unjust discrimination, violation of Section 404(b) of the Civil Aeronautics Act.[1] Defendant removed plaintiff from a flight on which plaintiff had confirmed reservations. *Held:* Defendant wantonly violated plaintiff's right to accommodations constituting tortious conduct for which plaintiff was awarded actual and exemplary damages. *Wills v. Trans World Airlines, Inc., 200 F. Supp. 360 (S.D. Calif. 1961).*

Almost without exception, the prohibition against discrimination in Section 404(b)[2] of the Act has been applied to cases involving competitive practices[3] among the airlines.[4] However, in *Fitzgerald v. Pan American World Airways,*[5] the court held that the unreasonable discrimination prohibition of Section 404(b) creates a federal civil-right cause of action.[6] The court reasoned that violation of the statute was a federal crime, and thus when the statute is violated, a federal cause of action accrues to the class of individuals protected by the statute.

In this case, plaintiff complied fully with Passenger Rule 12.[7] By doing

[19] The other case is Gotreaux v. Gary, 94 So.2d 293 (La. 1957), noted in 32 Tul. L. Rev. 146. There the court based its decision upon a civil law statute pertaining to harm to adjoining landowners for activity on one's own property.

[20] Note, 43 Minn. L. Rev. 532 (1959).

[1] Civil Aeronautics Act, Title IV, 72 Stat. 760 (1958), 49 U.S.C.A. § 1374(b).

[2] *Ibid.* "No air carrier or foreign air carrier shall make, give or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in air transportation in any respect whatsoever, or subject any particular person, port, locality or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

[3] Summer Excursion Cases, 11 C.A.B. 218 (1950).

[4] See generally, Gellman, *Regulation of Competition in U. S. Domestic Air Transportation: A Judicial Survey and Analysis,* 25 J. Air L. & Com. 149.

[5] 229 F.2d 499 (2d Cir. 1956). This case concerned an allegation by Negroes that they had been "bumped" because of discrimination by the airline because of their race and color. This case is the only reported decision which deals with discrimination under the Civil Aeronautics Act other than the competition cases.

[6] Cowen v. Winter, 96 Fed. 929 (6th Cir. 1899).

[7] Passenger Rule 12 of the applicable tariff filed under the authority of 49 U.S.C.A. § 1373 sets out that "the carrier will cancel the reservation . . . of any passenger from any point named on his ticket or exchange order unless the passenger advises the carrier of his intention to

so, he acquired a priority right[8] to accommodations over passengers with reservations confirmed subsequent to his. Defendant arbitrarily cancelled plaintiff's tourist seat reservation in order to accommodate a first-class passenger. This discriminatory action violated plaintiff's rights and Section 404(b) of the Act. The court justified its jurisdiction over the matter in the following manner. The Civil Aeronautics Board, although the watchdog of the airlines,[9] had no authority to grant redress or damages for past violations,[10] thus there was no conflict of jurisdiction and in fact only the courts could grant adequate relief.[11] Finding plaintiff's rights abused, the court awarded actual damages to the plaintiff.[12] The court also awarded $5,000 exemplary damages on the theory that the right to grant punitive damages was justified by statutory[13] implication advanced in *Hague v. Committee for Industrial Organization*,[14] and that those damages were justified by defendant's intentional and wanton disregard of plaintiff's rights.[15]

The true significance of this case is found not in the legal reasoning alone; its significance lies in the apparent effect it had in accelerating the airlines' attempts to solve a major problem in this area. The basic cause for an airline overbooking its flights stems from the air carrier's concern over confirmed passengers failing to appear for their scheduled flights. When a passenger fails to cancel his reservation, a flight may depart with empty seats which could have been sold. To alleviate this problem, eleven major airlines[16] submitted a proposal to the CAB which would permit a service charge to be assessed against "no show" passengers.[17] The CAB, aware of the frequent overbooking indulged in by the airlines,[18] tentatively agreed to the proposal and made final approval contingent on a reciprocal penalty being assessed against the airlines for overbooking, whether it be inadvertent[19] or intentional. On March 1, 1962, the CAB approved an agreement incorporating penalties for both "no shows" and overbooking.[20] This agreement went into effect May 1, 1962 on a trial basis for a period of six months.

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use his reservation by communicating with a reservation or ticket office of the carrier at such point at least six hours before his scheduled flight departure time."

[8] 49 U.S.C.A. § 1304. "There is recognized and declared to exist in behalf of any citizen of the United States a public right of freedom of transit through the navigable airspace of the United States."

[9] 49 U.S.C.A. § 402.

[10] 49 U.S.C.A. § 1482.

[11] Wills v. Trans World Airlines, Inc., 200 F. Supp. 360, 365 (1961). The court stated that an "alternative to a Federal cause of action for the aggrieved airline passenger is to remit a plaintiff to his remedy in the State courts, based on a State created cause of action. But this recourse would fall short of effectuating the purposes of the Act."

[12] Plaintiff's only out of pocket damages were found to be $1.54.

[13] 42 U.S.C.A. § 1983.

[14] 101 F.2d 774, 789 (3d Cir. 1939) *modified on other grounds*, 307 U.S. 496 (1939).

[15] Lake Shore M.S. Ry. Co. v. Prentice, 147 U.S. 101 (1893).

[16] These eleven are: American, Braniff, Continental, Delta, Eastern, National, Northeast, Northwest, Trans World, United and Western.

[17] 1A Av. L. Rep. Para. 21,241 (Current C.A.B. Cases, Jan. 8, 1962).

[18] C.A.B. *Overbooking Practices of Trunkline Carriers*, Docket 11683.

[19] Eastern Airline Overbooking Enforcement Proceedings, Docket 8726, (Order Ser. No. E-14962 (Feb. 26, 1960)). (Overbooking through human error or communication lag does not constitute a violation of the Civil Aeronautics Act.)

[20] 1A Av. L. Rep. Para 21,258 (Current C.A.B. Cases, March 1, 1962). The charge to "no shows" is 5 dollars or 50% whichever is greater of the applicable one-way fare of the first remaining validated flight coupon, with a maximum charge of 40 dollars. The penalty for oversales is similar; however, there are certain conditions which may relieve the carrier from making payments for oversales.

The problem of collecting these penalties is manifest. However, it is hoped that the very existence of these potential penalties will reduce the necessity for such collection. It is hoped that if the traveling public is apprised of the "no show" penalty they will be more likely to inform the airlines of intended cancellations. Conversely, the airlines will be less likely to oversell their flights if overbooking produces penalties. Certainly the decision in the *Wills* case will insure the latter.

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